

Deep Dive into the  
Phenomenon of Live  
Online Child Sexual  
Abuse and Exploitation:

# HOW TO BETTER PROTECT CHILDREN?



May 2022



# FOREWORD

The scourge of sexual violence against children both online and offline is growing exponentially, and has only been exacerbated further by changes brought about by the Covid-19 crisis. With tourism and mass travel having largely declined during this period, populations dependent on income from these activities experienced greater insecurity, and abusers increasingly turned to the internet as they were unable to travel. At the same time, between lockdowns, school closures and limited outings, children were more exposed to the internet and its dangers, often without parental supervision.

Beyond the health crisis, the online environment is now a major societal issue, giving rise to numerous discussions on the phenomenon of sexual violence against children online, as well as on many other subjects such as establishing a balance providing protection of personal data while also ensuring protection of children, and the responsibility of companies in the digital sphere.

The Central Office for the fight against serious and violent crimes (OCRVP), and in particular the Central Unit for Minors protection, is France's dedicated expert unit specialised in combatting live distance child abuse, a component of the broader phenomenon of online child sexual exploitation. The idea for this study arose from a discussion with ECPAT International and ECPAT France during a seminar organised by the service in June 2019 in Singapore that brought together actors from all sectors (police, justice, NGOs, private sector, etc.) and from around the world, all specialised in combatting child sexual offences.

The GCMV's missions, which are investigating child sexual abuse online, targeting high profile individuals and prosecuting French nationals that commit such abuse while travelling abroad, in addition to its international engagements and providing training

to foreign law enforcement agencies, particularly in major "destination" countries, are consistent with the findings of this study. It accurately and precisely highlights the key issues and proposes, through the 23 recommendations, crucial, concrete solutions to effectively combat these criminal phenomena. Like the work carried out by ECPAT France on their behalf, this study places child victims and survivors of child sexual abuse at the very core of the analysis, focusing on: prevention, so that they never have to experience such criminal acts; protection, so that they can escape from these abusive situations; and support, so that they can seek justice, obtain compensation, and rebuild themselves and their lives, surrounded by people they can trust.

Personally, I was struck by the disparate treatment of the issue of online and offline sexual violence against children, no matter where the child or the abuser is in the world: weaknesses in international and even European legal definitions; substantial differences in the sentences handed down from one country to another, and even within the same region, as across Europe; and disparities in the resources available to police and justice services. Prioritising the fight against this phenomenon and providing the necessary means to effectively counter it are essential to implementing the recommendations of this study. We hope that this study will support and encourage those working with and for child victims of online sexual exploitation, shedding light on the victims' experience, acknowledging their suffering and upholding their fundamental rights.

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## METHODOLOGY

This study was born out of a discussion between the OCRVP, ECPAT International and ECPAT France in Singapore in June 2019. The phenomenon of live online child sexual abuse was already well known, but major disparities in its approach depending on the countries and regions have been identified. The need for a study that should present the phenomenon, analyze existing legislation, identify good practices and formulate recommendations was obvious.

Two years later, after an unprecedented sanitary crisis that increased children's vulnerabilities in the digital environment, the research was born. It was conducted between October 2021 and May 2022.

The study is based on national, European and international legal frameworks, court decisions, as well as recent research and contributions. It is also based on interviews with multidisciplinary professionals and contributions from police and association professionals, responding to written questionnaires. The methodological framework and interview protocols were defined upstream and sent to all contributors.

The study also benefited from the participation of two survivors of live online child sexual abuse who shared with us their experience and their recommendations to combat the phenomenon, thanks to the support of IJM Philippines.

# ABBREVIATIONS AND ACRONYMS

|   |  |   |
|---|--|---|
| <b>AFP:</b> Australian Federal Police   | Child Sexual Exploitation database   | <b>OPSC:</b> Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography |
| <b>APFC:</b> Asia-Pacific Financial Coalition Against Child Sexual Exploitation                         | <b>ICTs:</b> information and communication technologies  | <b>OSEC:</b> Online Sexual Exploitation of Children   |
| <b>AUSTRAC:</b> Australian Transaction Reports and Analysis Centre                                      | <b>IJM:</b> International Justice Mission  | <b>OVA:</b> Office for Victim Assistance  |
| <b>CPVA:</b> Child Pornography Victim Assistance  | <b>ILO:</b> International Labour Organization  | <b>PICACC:</b> Philippine Internet Crimes Against Children Center   |
| <b>CRC:</b> Convention on the Rights of the Child   | <b>INHOPE:</b> International Association of Internet Hotlines  | <b>PII:</b> personal identifiable information   |
| <b>CSAM:</b> child sexual abuse material  | <b>Interpol:</b> International Criminal Police Organization  | <b>PNP-WCPC:</b> Philippine National Police's Women and Children Protection Center  |
| <b>ECPAT:</b> End child prostitution, child pornography and trafficking of children for sexual purposes | <b>IP:</b> Internet Protocol   | <b>SAR:</b> Suspicious Activity Report  |
| <b>ECRIS:</b> European Criminal Record Information System   | <b>IWF:</b> Internet Watch Foundation  | <b>SGSC:</b> generated sexual content/material  |
| <b>EFC:</b> European Financial Coalition  | <b>IWG:</b> Interagency Working Group  | <b>SICs:</b> Safer Internet Centers   |
| <b>ESPs:</b> Electronic Service Providers   | <b>KYC:</b> Know Your Customer   | <b>STRs:</b> Suspicious Transaction Reports   |
| <b>EU:</b> European Union   | <b>LDCA:</b> Livestreaming or Live Distant Child Abuse   | <b>TCSOs:</b> transnational child sex offenders   |
| <b>Europol:</b> European Union Agency for Law Enforcement Cooperation                                   | <b>LEAs:</b> law enforcement agencies  | <b>Tor:</b> The Onion Router  |
| <b>FBI:</b> Federal Bureau of Investigation   | <b>Luxembourg Guidelines:</b> Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse                      | <b>UK NCA:</b> National Crime Agency  |
| <b>FCACP:</b> Financial Coalition Against Child Pornography   | <b>MSB:</b> Solid Money Service Business   | <b>UN:</b> United Nations   |
| <b>FCACSE:</b> Financial Coalition Against Child Sexual Exploitation                                    | <b>NBI-AHTRAD:</b> National Bureau of Investigation's Anti-Human Trafficking Division  | <b>UNICEF:</b> United Nations Children's Fund   |
| <b>FINTRAC:</b> Financial Transactions and Reports Analysis Centre                                      | <b>NCMEC:</b> National Center for Missing and Exploited Children   | <b>UNHCHR:</b> Office of the United Nations High Commissioner for Human Rights  |
| <b>FIUs:</b> Financial Intelligence Units   | <b>NSPCC:</b> National Society for the Prevention of Cruelty to Children   | <b>UNODC:</b> United Nations Office on Drugs and Crime  |
| <b>GDPR:</b> General Data Protection Regulation   | <b>NVB:</b> Dutch Banking Association  | <b>VASPs:</b> Virtual Asset Service Providers   |
| <b>ICMEC:</b> International Centre for Missing & Exploited Children                                     | <b>OCRVP:</b> <i>Office central pour la répression des violences aux personnes</i> (Central Office for the Repression of Violence against Persons) | <b>VGT:</b> Virtual Global Taskforce  |
| <b>ICSE database:</b> International   |  | <b>VIS:</b> Victim Impact Statement   |
|   |  | <b>VNS:</b> Victim Notification System  |

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# DEFINING LIVE ONLINE CHILD SEXUAL ABUSE

## Live Online Child Sexual Abuse<sup>1</sup>

Live online child sexual abuse refers to the participation of a child in real or simulated sexual activity, alone or with other children or adults, that is transmitted live through information and communication technologies (“ICTs”) and watched by others remotely from anywhere. Live online child sexual abuse typically involves children who are coerced or forced by the child sex offender requesting and/or directing the sexual abuse, or by the trafficker/facilitator manipulating the sexual abuse.

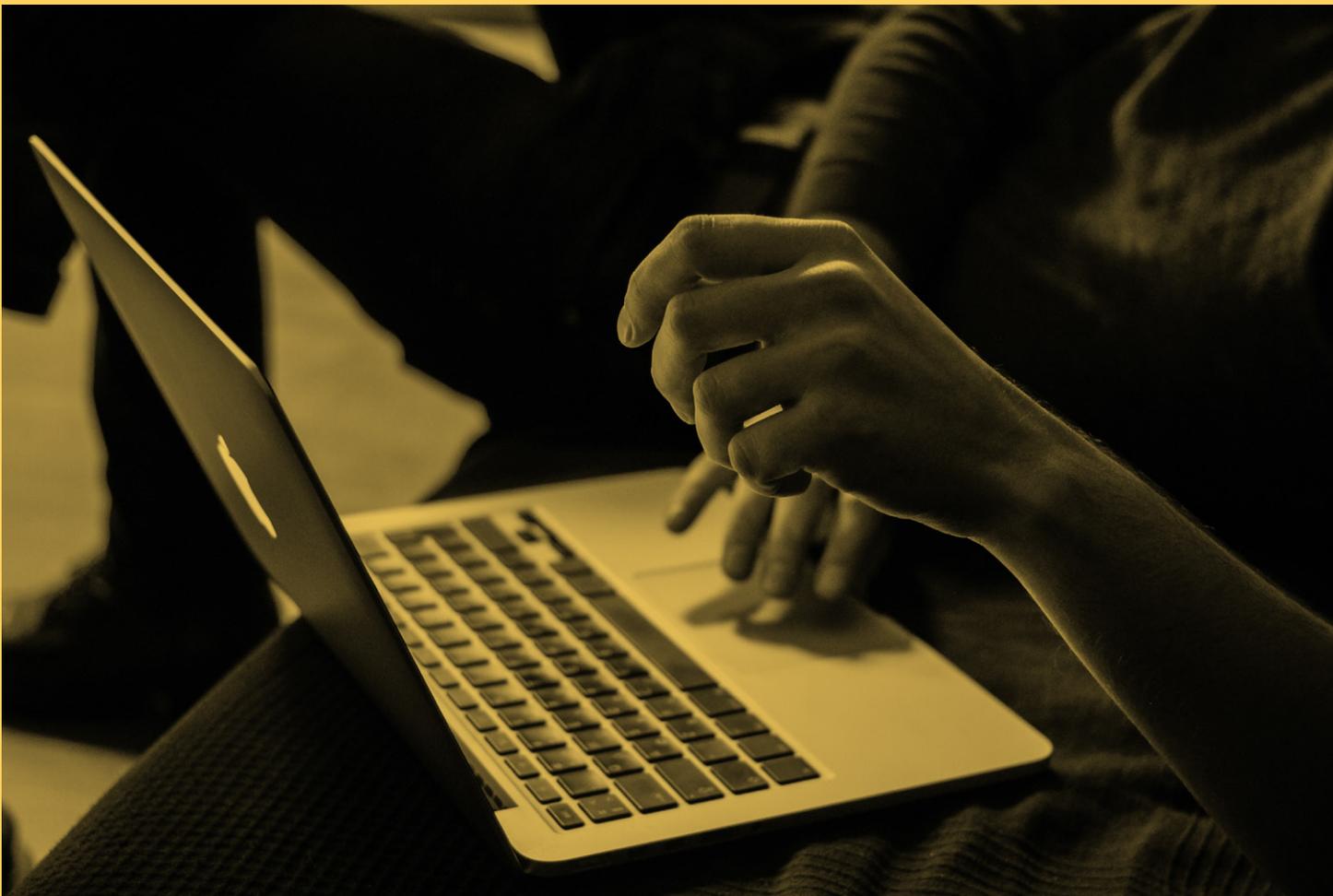
It may take on both commercial and non-commercial forms; in some instances, it may be set up as a proper business with the aim of financially profiting from the sexual abuse of the children involved. The use of ICTs enables child sex offenders to communicate with traffickers and facilitators around the world who are livestreaming the sexual abuse of children. In this regard, the child sex offenders watching remotely may request the sexual abuse of the child and/or dictate how the acts should be carried out either in advance of the sexual abuse or while its underway.

The role of child sex offenders participating in the sexual abuse of children online should never be minimized since participating at a distance is frequently not an isolated act. It is also worth emphasizing that child victims are sexually abused by the facilitators in order to satisfy the expected or communicated sexual fantasies of the participants. In addition to requesting the sexual abuse of the child and/or dictating how the acts should be carried out, child sex offenders may arrange travel specifically to sexually engage with children offline. There is a strong association between the consumption of live online child sexual abuse and subsequent travelling to sexually abuse the children in the place where they are located. As a result, live online child sexual abuse may be a precursor to transnational child sexual offending.

**1.** Other terms of this type of offence may be used in this report, but only when directly quoting from another source or to reflect the terminology used in the cited source.

## Livestreaming of Child Sexual Abuse

Live online child sexual abuse is often transmitted to viewers through “streaming” over ICTs, which is referred to as the livestreaming of child sexual abuse. The term “streaming” refers to the real-time production and transmission of audio and video files in a continuous flow over a wired or wireless internet connection. It means that the data are transmitted instantaneously to the electronic device of the viewer, who can watch and engage remotely while the sexual abuse is occurring. The live streaming of child sexual abuse leaves no trace on electronic devices (except possible written conversations), because no file is downloaded and saved onto a hard disk; when the streaming is stopped the material is gone. As a result, it is available only on one occasion and leaves no trace on the electronic device once it has been viewed, unless it is deliberately recorded. In this regard, the sexual abuse may be recorded either by child sex offenders or the traffickers/facilitators at the location of the sexual abuse and then disseminated online, which substantially add to the volume of child sexual abuse material (“CSAM”) available on the web. The CSAM obtained from live online child sexual abuse may be used in order to be part of communities of like-minded individuals who exchange CSAM and require their members to share new and unseen CSAM.



# TERMINOLOGY CONSIDERATIONS

The use of a standard terminology is of paramount importance in the global effort to combat the various forms of child sexual abuse and exploitation including live online child sexual abuse. As ECPAT highlights, "Words matter because they affect how we conceptualise problems, prioritise issues, and forge responses. Inconsistent use of language and terms can lead to inconsistent laws and policy responses on the same issue."<sup>2</sup> While countries have transposed and implemented provisions addressing child sexual abuse and exploitation, there is conceptual confusion surrounding the use of certain terms and some disagreement over their actual meaning. In addition, the use of some terms may even stigmatize children. This can pose significant challenges leading to inconsistencies in the formulation of policy and intervention strategies, which are magnified in the context of transnational child sexual abuse and exploitation. The absence of consensus and the lack of any agreed terms, especially at international level, may pose significant challenges in terms of translation and lead authors to use similar notions which may differ significantly from one another. In this regard, an international Interagency Working Group ("IWG") initiated by ECPAT addressed this issue by examining the terminology relating to child sexual abuse and exploitation and identifying ambiguous or problematic terms in order to harmonize terms and formulate universal definitions. ECPAT published the *Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse* in 2016, which are commonly referred to as the "Luxembourg Guidelines". They "contain a set of terms that professionals and international agencies commonly apply in their work on the prevention and elimination of sexual exploitation

and sexual abuse of children. They are meant to be 'universal' and applicable to work against these phenomena in all settings." ECPAT also pointed out that "Given the fast evolution of information and communication technologies (ICTs), which in turn brings new manifestations of sexual exploitation and sexual abuse of children, shaping a common understanding is increasingly important in the global effort to eradicate these children's rights violations." This is particularly relevant to the phenomenon of live online child sexual abuse since this is a new form of sex-based crime against children, although an established reality, enabled by ICTs and not yet expressly defined and regulated in national legislations.

In the same regard, the European Parliament explicitly set forth that it "is essential to use the correct terminology for crimes against children, including the description of images of sexual abuse of children, and to use the appropriate term 'child sexual abuse material' rather than 'child pornography'".<sup>3</sup> The European Parliament also acknowledges that "the term 'child pornography' is not appropriate to define the offences in Articles 5 and 2(c) of Directive 2011/93/EU and may be detrimental to the child victims."<sup>4</sup> Although the term "child pornography" is firmly anchored in international legally binding instruments and national legislation, the European Parliament recommends that the

2. "Luxembourg Guidelines," *ECPAT International*, Introduction: <https://ecpat.org/luxembourg-guidelines/>, p. 1.

3. "Fight against child sexual abuse on the Internet European Parliament resolution of 11 March 2015 on child sexual abuse online (2015/2564(RSP))," *Official Journal of the European Union*: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52015IP0070>.

4. "Implementation of the directive on combating the sexual abuse and sexual exploitation of children and child pornography," *Official Journal of the European Union*: <https://eur-lex.europa.eu/legal-content/EN/TX-T/?uri=CELEX%3A52017IP0501>.

European Commission as well as the Member States use the term “child sexual abuse material” instead of the term “child pornography”. In addition, law enforcement and child protection agencies have questioned the appropriateness of this term and suggest the same alternative term. In legally binding instruments, the term “child pornography” refers to child sexual abuse material as well as the offences related to this issue.<sup>5</sup> However, the term “pornography” is primarily used for adults engaging in consensual sexual acts distributed to the general public for their sexual pleasure.<sup>6</sup> As a result, this term appears to be inappropriate as it may, inadvertently or not, contribute to insinuating that the acts are carried out with the consent of the child and represent legitimate sexual material. The term may also contribute to diminishing the gravity of the actual sexual abuse/exploitation of children or trivializing and even legitimizing it. In this regard, the same reasoning should be applied for live online child sexual abuse, because some existing terms used by academics as well as civil society organizations, law enforcement agencies and the media may be considered inappropriate.



## Pornographic Performance

At the European level, the term “pornographic performance” is used to refer to live online child sexual abuse. The Directive 2011/93/EU is the first legal instrument to define the term “pornographic performance”. However, the term “pornographic performance” also appears to be inappropriate to define the offences in Articles 4 and 2(e) of the Directive due to the same reasons stated above. Additionally, in the case of “pornographic performance”, the term “performance” conveys the idea of artistic performance, which may also diminish the gravity of the actual sexual abuse/exploitation of children or trivialize and give a sense of legitimacy. As a result, the terminology used to refer to live online child sexual abuse should reflect the real gravity of the offence without making the offence seem innocuous.

**5.** “Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA,” *Official Journal of the European Union*, Article 5, Offences concerning child pornography: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex-%3A32011L0093>.

**6.** Pornography is legal in most of Europe and in North America, while it is not legal in most other parts of the world.



## Webcam Child Sex Tourism

The term "webcam child sex tourism" is used in order to highlight the transnational nature of this phenomenon in which any individual can sexually engage with children located in other countries without having to travel and sexually engaging with children physically<sup>7</sup>. However, the use of the terms "webcam" and "tourism" may be inappropriate. The term "webcam" only refers to the electronic device which is used to transmit and view live online child sexual abuse. As a result, this term limits the sexual abuse of children to acts which are committed using a webcam and does not include acts that could be carried out using electronic devices such as laptops, smartphones or tablets with integrated cameras. Additionally, the rapid pace of technological advancements may result in the creation of new electronic devices replacing the webcam. As a result, this term may become irrelevant with the advent of new technology and preclude a sustainable response to this phenomenon. The term "tourism" implies that live online child sexual abuse occurs only within the context of tourism and that the response to this phenomenon relies solely on the tourism sector. Furthermore, the use of the term "tourism" may downplay the serious nature of this crime, because in absence of the terms "sexual abuse" it implies that it may be considered as a legitimate form of tourism. The fact that this term refers exclusively to the tourism sector excludes various types of child sex offenders such as transnational child sex offenders, who travel across international borders on a short-term basis or reside permanently or on a long-term basis in another country and commit sex-based crimes against children outside of their country of nationality or habitual residence. Additionally, the term also excludes child sex offender who travel across international borders for specific purposes such as in the context of civil crisis management, diplomatic or humanitarian missions and "voluntarism"<sup>8</sup>. In the same regard, the term "tourism" also excludes the fact that live online child sexual abuse can also occur within the borders of a country. It is worth mentioning that in a study conducted by the Internet Watch Foundation ("IWF")<sup>9</sup>, the most common forms of CSAM resulting from live online child sexual abuse depicted girls of Western origins and appearing alone in a home setting such as in their own bedroom. This type of material implies that there may be some forms of potential solicitation of children for sexual purposes (i.e., grooming, sexual extortion) and suggests the possibility that an individual has dictated the sexual acts depicted in this material, especially when it comes to much younger children who do not demonstrate any understanding of the sexual nature of what they were being made to do. Additionally, it presupposes that both child sex offenders and child victims speak the same language. As a result, live online child sexual abuse resulting from the solicitation of children for sexual purposes may not necessarily occur outside the borders of a country, which makes the notion of "tourism" irrelevant.

7. "Webcam Child Sex Tourism Becoming Sweetie: a novel approach to stopping the global rise of Webcam Child Sex Tourism," *Terre des Hommes*, January 2014: <https://www.terredeshommes.org/webcam-child-sex-tourism-2/>.

8. See definition in "Sexual Exploitation of Children & Voluntourism," *ECPAT International*: <https://ecpat.org/resource/international-volunteering-and-child-sexual-abuse/>, p. 1.

9. "Trends in Online Child Sexual Exploitation: Examining the Distribution of Captures of Live-streamed Child Sexual Abuse," *Internet Watch Foundation*, May 2018: <https://www.iwf.org.uk/about-us/why-we-exist/our-research/>.



## Webcam Child Prostitution

The term “webcam child prostitution” is used to refer to children performing sexual acts in exchange<sup>10</sup> for money or anything of material or immaterial value through ICTs. This term is considered as a form of prostitution with the only difference being the use of ICTs and the absence of physical contact. While the term “webcam” limits the scope of the definition to sexual acts which are carried out only via this particular electronic device, the term “prostitution” implies that live online child sexual abuse represents a legitimate form of sex work and that children have given their informed consent to prostitute themselves. However, the notion of consent is considered irrelevant because “Sex work is defined as the consensual sale of sex between adults, [and] children (people under 18 years) cannot be involved in sex work. Instead, children involved in sex work are considered to be victims of sexual exploitation.”<sup>11</sup> In this regard, the children who are victims of sexual exploitation in the context of live online child sexual abuse could be entitled to protection. While the term “child prostitution” is firmly anchored in international legal instruments<sup>12</sup>, it is important to use more appropriate terms such as “exploitation of children in/for prostitution in order to underline the notion of exploitation as well as the fact that children are not to be held responsible.”<sup>13</sup> Nevertheless, such terms including the notion of prostitution may still inadvertently legitimize and put the blame on children engaged in such practices. It is therefore important to use more suitable terms that reflect the reality of live online child sexual abuse.



## Livestreaming or Live Distant Child Abuse

Europol uses the terms “livestreaming of child abuse” and “live distant child abuse” in order to refer to live online child sexual abuse.<sup>14</sup> These terms accurately reflect this crime by highlighting the sexual abuse committed through ICTs and the lack of physical contact between child sex offenders and child victims. These terms may also be used interchangeably when referring to live online child sexual abuse and the former has a generally agreed meaning and/or can be used without stigmatizing and/or otherwise harming the child based on the IWG<sup>15</sup>. However, it is important not to overemphasize the focus on the technological aspect of the crime (i.e., “livestreaming”) due to the rapid technological advancements. Additionally, it is important not to overemphasize the notion of distance. It is worth recalling that although the acts are transmitted in real time online through ICTs, the sexual abuse is still real. Child victims may be sexually abused physically by traffickers/facilitators and their peers (also victimized) even though child sex offenders may “passively” watch the acts carried out against them.

**10.** It is not necessarily the child who receives the object of exchange, but often a third person. Moreover, it is not necessary that an object of exchange is actually given; the mere promise of an exchange suffices, even if it is never fulfilled.

**11.** UNAIDS Terminology Guidelines – 2015: [https://www.unaids.org/en/resources/documents/2015/2015\\_terminology\\_guidelines](https://www.unaids.org/en/resources/documents/2015/2015_terminology_guidelines).

**12.** “Directive 2011/93/EU,” Article 2(d) Definitions.

**13.** See “Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse,” *ECPAT International*, June 2016, E. Exploitation of children in/for prostitution, <https://ecpat.org/luxembourg-guidelines/>.

**14.** See “Internet Organised Crime Threat Assessment (IOCTA) 2017”, *Europol*: <https://www.europol.europa.eu/publications-events/main-reports/internet-organised-crime-threat-assessment-iocta-2017> p. 39.

**15.** “Luxembourg Guidelines,” *ECPAT International*, G.3.i Live streaming of child sexual abuse: <https://ecpat.org/luxembourg-guidelines/>, p. 47.



## Child Sexual Abuse to Order

Child sexual abuse to order refers to a child sex offender requesting or dictating beforehand, or while the sexual abuse takes place, that a certain action be carried out. The child sexual abuse is transmitted in real time or recorded to a file for the individual who requested/dictated it, which may be in exchange for payment. Child sexual abuse to order may be considered as a subset of live streaming of child sexual abuse with the added element that the child sex offender viewing the streaming takes an active part in determining how the sexual abuse should be carried out. In this regard, it is possible to use the term “child sexual abuse to order”, which highlights the fact that the sexual abuse results from the request of child sex offenders for certain acts to be carried out, before or during the sexual abuse takes place. While this term has a generally agreed meaning and/or can be used without stigmatizing and/or otherwise harming the child according to the IWG,<sup>16</sup> it is worth noting that it does not specify whether the sexual abuse is transmitted in real time online through ICTs. Additionally, this term excludes the sexual abuse committed without the request of child sex offenders and who may “passively” watch the acts carried out against children. As a result, it is worth emphasizing that the lack of direct or active participation should not be considered a mitigating circumstance for those who are not actively participating.

The terminology developed by the IWG initiated by ECPAT may provide the basis for the creation of new national legislation to combat live online child sexual abuse<sup>17</sup>. On the basis of the Luxembourg Guidelines and the aforementioned considerations, the term “live online child sexual abuse” appears to be the most appropriate as it reflects the key aspects of this crime. First, the term “live” highlights the technological aspect of the crime without overemphasizing it. Second, the term “online” specifies that the criminal offence is conducted remotely and highlights the geographical aspect as well as the jurisdictional implications of this crime without overemphasizing the notion of distance. Third, the term “child sexual abuse” highlights the fact that the sexual abuse of children is real and actually occurs. Lastly, in addition to accurately reflecting the reality of live online child sexual abuse, these terms have a generally agreed meaning and/or can be used without stigmatising and/or otherwise harming the child according to the IWG.

<sup>16</sup>. Ibid., p.47-48.

<sup>17</sup>. We know that terminology is constantly changing. The term “sexual abuse” tends to be decried and replaced by “sexual violence”, as a sexual assault, a rape or any form of child sexual exploitation is never an “abuse”. You can only abuse something permitted; yet child sexual violence is never legal. Nevertheless, for this research, we have chosen to maintain its use. ECPAT France, in the coming months, will gradually drop the term “sexual abuse” in its work.

# A NEW TYPE OF CHILD SEX OFFENDERS

It is possible to distinguish child sex offenders who participate in live online child sexual abuse from other types of child sex offenders as they do not fall within the traditional type of child sex offenders. These new child sex offenders are characterized primarily by the fact that they want to be in control of the sexual abuse of children because viewing CSAM may not be enough. They may decide *what* is done to children, *how* it is done and for *how long* the acts are carried out. They may also decide the age, gender and number of children they want to sexually abuse. As a result, they may have a “customized” and real-time interactions with the children they sexually abuse. Additionally, they may also determine the severity of the acts carried out as well as the length of the sexual abuse. In addition to being in control of the sexual abuse, they do not want to expose themselves by physically engaging with children in order to sexually abuse them. As a result, technology enables these child sex offenders to commit the acts they cannot or do not want to carry out against children physically by proxy. In this regard, technology allows them to carry out these acts from the comfort of their home with relative secrecy and enables them to target multiple children with ease. The threats posed by live online child sexual abuse may be considered much higher than in the case of other traditional forms of child sexual exploitation and abuse, because it allows them to sexually abuse children much more frequently, much more cheaply and they are able to target a higher number of children since they do not have to actually travel somewhere else for sexually abusing children. As a consequence, a higher number of perpetrators, including those who cannot afford to travel, may take part in this criminal activity since possessing ICTs is the only requirement for being able to engage in such activity. It is worth noting that ICTs also allow for easier recruitment and solicitation of children for sexual purposes both for child sex offenders and traffickers or facilitators.

## The Perception of Risk among Child Sex Offenders

There are some child sex offenders who are not willing to pay in order to participate in live online child sexual abuse because they consider this activity too risky. As a result, they rather get involved in the solicitation of children for sexual purposes by luring, inciting and/or blackmailing child victims in order to sexually engage with them. Additionally, this form of live online child sexual abuse may be a stepping-stone to the offline sexual abuse of children.

The child sex offenders who are willing or prefer to pay in order to participate in live online child sexual abuse consider it less risky because there is more distance with child victims. Additionally, it requires less efforts than soliciting children for sexual purposes and there are less chances that child victims report the sexual abuse. As a result, they rather get involved in live online child sexual abuse which results for the trafficking of children.

There may be child sex offenders who are both paying and getting involved in the solicitation of children for sexual purposes in order to participate in live online child sexual abuse. These child sex offenders may use any means available to sexually engage with children and obtain CSAM. Additionally, some individuals may also act on any opportunity to obtain CSAM from live online child sexual abuse, which they can collect for their own sexual gratification or as a result on an addictive behavior. They may also use CSAM obtained from live online child sexual abuse in order to be part of communities of like-minded individuals who exchange CSAM and require their members to share new and unseen CSAM. As stated hereabove, the capture of live online child sexual abuse substantially adds to the volume of CSAM available on the web.

# KEY THREATS AND TRENDS

## The COVID-19 Impact

In its latest *Internet Organized Crime Threat Assessment*, Europol highlights that "There has been a steep increase in online grooming activities on social media and online gaming platforms [and that] the production of self-generated material is a key threat [that] is displaying increasingly younger children."<sup>18</sup> The nationwide closures of educational institutions in at least 188 countries impacted more than 90% of the world's student population and affected over a 1.5 billion children according to UNICEF leading to an increased time spent at home as well as online for entertainment, social and educational purposes. UNICEF also reported that Internet usage has been up 50% in some parts of the world following the COVID-19 outbreak, which introduced online gaming to an increasing number of children who may have only limited online experience and be less resilient to hurtful behaviours.<sup>19</sup> In this regard, Europol has warned that children "are more exposed to potential offenders through online gaming" It is worth highlighting that the global games market generated 159.3 billion US dollars in revenue during the year 2020, and the number of gamers worldwide is expected to exceed three billion by 2023.<sup>20</sup> The COVID-19 isolation abruptly pushed children's daily lives online and resulted in higher level of emotional vulnerability such as loneliness. As a result, children sought alternative ways of socializing online while not necessarily being aware of any associated risks, especially children aged 13 and younger who may not be familiar with these social networking tools

that may not be designed for them and for which they may have only limited preparation. According to Insafe and the International Association of Internet Hotlines ("INHOPE"), which work together through a network of Safer Internet Centers ("SICs")<sup>21</sup> across Europe, the first quarter of 2020 resulted in a sharp increase in the number of contacts received by European helplines. The helplines received over 19,000 contacts during the second quarter of 2020 which represented a 70% increase on the same reporting period in 2019.<sup>22</sup>

In spite of the sharp spike of reports during the COVID-19 crisis, law enforcement agencies could not cope with the volume of cases. According to WeProtect, "it may be years before the full scale of pandemic-related abuse is revealed."<sup>23</sup> According to Netclean, more than half of the law enforcement officers surveyed reported that their capacity to investigate child sexual exploitation and abuse

18. Europol (2021), *Internet Organised Crime Threat Assessment (IOCTA) 2021*, Publications Office of the European Union, Luxembourg: <https://www.europol.europa.eu/publications-events/main-reports/internet-organised-crime-threat-assessment-iocta-2021#downloads>.

19. "COVID-19 and its implications for protecting children online," UNICEF, April 2020: <https://www.unicef.org/documents/covid-19-and-implications-protecting-children-online>.

20. "Newzoo Global Games Market Report 2020, Light Version," Newzoo, June 25, 2020: <https://newzoo.com/insights/trend-reports/newzoo-global-games-market-report-2020-light-version/>.

21. The SICs are composed of national awareness centers, a helpline (Insafe), a hotline (INHOPE) and youth panels. See *Better Internet for Kids*: <https://www.betterinternetforkids.eu/policy/insafe-inhope>.

22. "Latest helpline trends: Quarter 2, 2020," *Better Internet for Kids*, September 25, 2020: <https://www.betterinternetforkids.eu/practice/helplines/article?id=6473739>.

23. "Global Threat Assessment 2021, Working together to end the sexual abuse of children online," *WeProtect Global Alliance*: <https://www.weprotect.org/global-threat-assessment-21/>, p. 22.

has fallen due to the COVID-19 crisis.<sup>24</sup> According to Interpol, the introduction of work-from home policies, the shifting of priorities due to the COVID-19 resulted in human and technical challenges impacting the effectiveness of investigations. In addition, Interpol observed that more than half of member countries have not accessed or used the International Child Sexual Exploitation ("ICSE") database during the COVID-19 crisis.<sup>25</sup> Although the COVID-19 resulted in a sharp spike of reports, the lockdown measures resulted in some children being unable to report sexual abuse issues to social services or trusted individuals such as friends, teachers, medical practitioners, social workers, etc.<sup>26</sup> As a consequence, child victims have made delayed reports of sexual abuse exacerbating existing backlogs for social services and law enforcement agencies.

In June 2020, Europol reported a considerable number of referrals from the National Center for Missing and Exploited Children ("NCMEC") in relation to CSAM/CSEM on the surface web, and that European Member States witnessed an increase in the number of blocked attempts to access CSAM/CSEM as well as an increase in the detection of CSAM/CSEM on peer-to-peer (P2P) networks.<sup>27</sup> Activity on dark web forums and websites dedicated to child CSAM/CSEM remained "business as usual". Tor (The Onion Router) has been widely used since 2012 for various criminal activities including OSEC as child sex offenders move from the surface web to the dark web to preserve their anonymity online. These platforms may be organized based on a code of conduct and encourage or require its users to participate by producing or distributing CSAM/CSEM. Discussions about the issues caused by the COVID-19 arose on these platforms as well as discussions highlighting the opportunities provided due to the lockdowns and restrictions on the freedom of movement. One could read statements such as the following (extracted by Europol): "is nobody seeing the bright side of this pandemic? Schools are closed so kids are at home bored [...] what a time to be alive". It is common practice for these users to exchange information in the form of manuals explaining how to avoid detection by law enforcement authorities or to safely travel to commit sexual offences against children. During the Covid-19 crisis, child sex offenders created and shared a manual about online grooming with the aim of sexually exploiting children.<sup>28</sup>

## TRANSNATIONAL CHILD SEX OFFENDERS

In September 2020, Interpol highlighted the significant decrease of sex-based crimes against children committed by transnational child sex offenders ("TCSOs"), which correlated with the restrictions on the freedom of movement during the COVID-19 crisis.<sup>29</sup> As a result of the international travel restrictions, TCSOs fell back on live online child sexual abuse which has become a viable alternative for child sex offenders to sexually engage with children.<sup>30</sup>

24. "Netclean Report – Covid-19 Impact 2020." Insight 5, Covid-19 has Affected the Capacity to Investigate Child Sexual Abuse Crimes, *Netclean*: <https://www.netclean.com/netclean-report-2020/insight-5/>.

25. "Threats and Trends Child Sexual Exploitation and Abuse, COVID-19 Impact," *Interpol*, September, 2020: <https://www.interpol.int/en/News-and-Events/News/2020/INTERPOL-report-highlights-impact-of-COVID-19-on-child-sexual-abuse>.

26. "The impact of the coronavirus pandemic on child welfare: sexual abuse," *National Society for the Prevention of Cruelty to Children*, August 2020: <https://learning.nspcc.org.uk/media/2280/impact-of-coronavirus-pandemic-on-child-welfare-sexual-abuse.pdf>

27. "Exploiting Isolation: Offenders and victims of online child sexual abuse during the COVID-19 pandemic," *Europol*, 19 June 2020: <https://www.europol.europa.eu/publications-documents/exploiting-isolation-offenders-and-victims-of-online-child-sexual-abuse-during-covid-19-pandemic>.

28. "Child abuse predator 'handbook' lists ways to target children during coronavirus lockdown," *The Guardian*, 13 May 2020: <https://www.theguardian.com/society/2020/may/14/child-abuse-predator-handbook-lists-ways-to-target-children-during-coronavirus-lockdown>.

29. "Threats and Trends," *Interpol*.

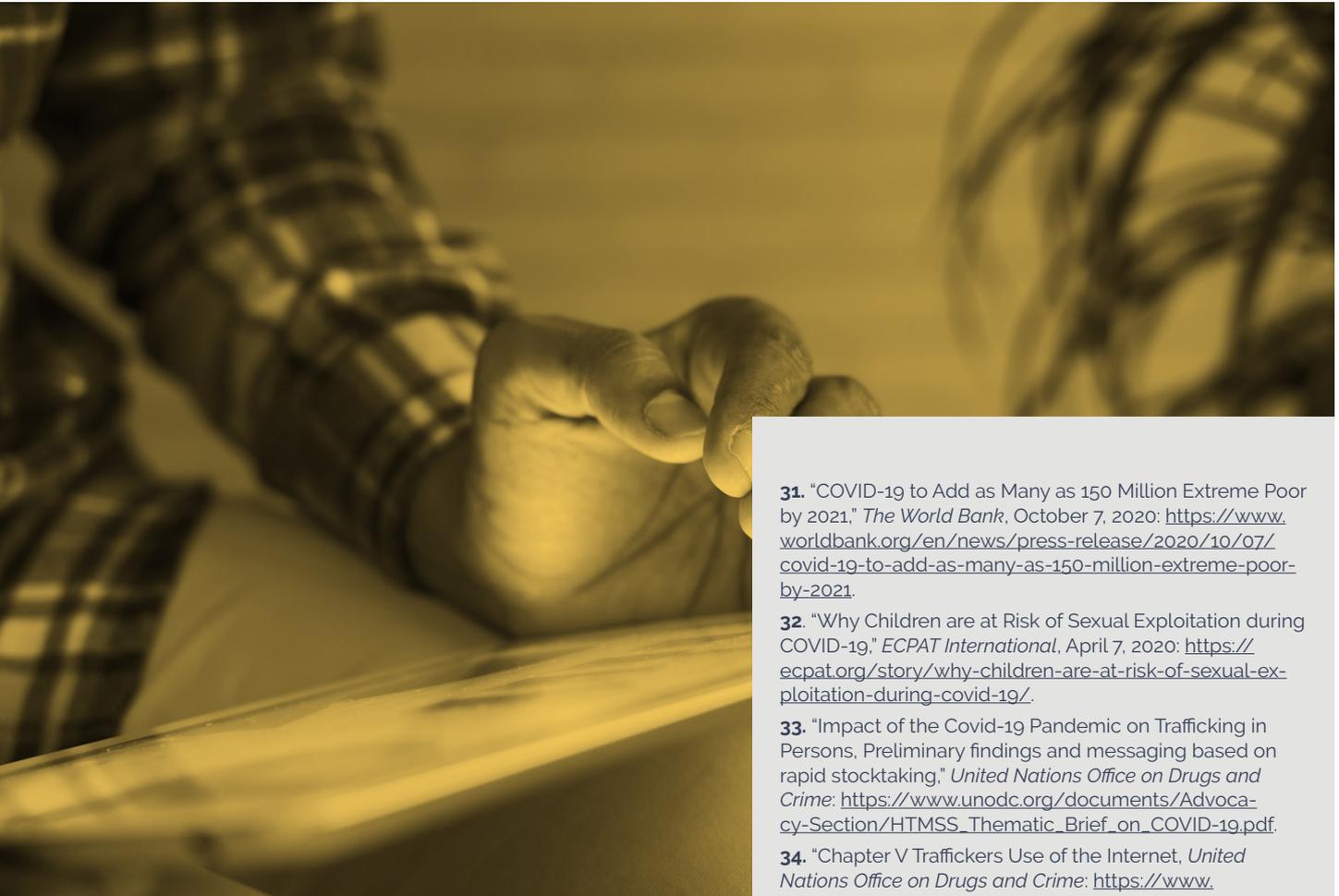
30. IOCTA 2021.

## POVERTY

In October 2020, The World Bank estimated that the pandemic would push an additional 88 to 115 million people into extreme poverty, causing this number to reach up to 150 million during the year 2021.<sup>31</sup> The economic hardship worsened by the COVID-19 crisis put children at greater risk of live online child sexual abuse, especially in countries of the Global South where it mainly results from the trafficking of children for sexual purposes. While the demand from child sex offenders across the world has continued to increase, the families that lose their income may see an opportunity in sexually exploiting children via live online child sexual abuse.<sup>32</sup>

## TRAFFICKING OF HUMAN BEINGS

Traffickers may take advantage of this increased demand for live online child sexual abuse. The UNODC pointed out that "criminals are adjusting their business models to the 'new normal' created by the pandemic, especially through the abuse of modern communications technologies."<sup>33</sup> Additionally, "Internet technologies allow for exploitation in front of larger audiences than is generally possible with traditional trafficking."<sup>34</sup> Online grooming for sexual purposes may also be used by traffickers in order to recruit children and sexually exploit them for profit.



**31.** "COVID-19 to Add as Many as 150 Million Extreme Poor by 2021," *The World Bank*, October 7, 2020: <https://www.worldbank.org/en/news/press-release/2020/10/07/covid-19-to-add-as-many-as-150-million-extreme-poor-by-2021>.

**32.** "Why Children are at Risk of Sexual Exploitation during COVID-19," *ECPAT International*, April 7, 2020: <https://ecpat.org/story/why-children-are-at-risk-of-sexual-exploitation-during-covid-19/>.

**33.** "Impact of the Covid-19 Pandemic on Trafficking in Persons, Preliminary findings and messaging based on rapid stocktaking," *United Nations Office on Drugs and Crime*: [https://www.unodc.org/documents/Advocacy-Section/HTMSS\\_Thematic\\_Brief\\_on\\_COVID-19.pdf](https://www.unodc.org/documents/Advocacy-Section/HTMSS_Thematic_Brief_on_COVID-19.pdf).

**34.** "Chapter V Traffickers Use of the Internet," *United Nations Office on Drugs and Crime*: [https://www.unodc.org/documents/data-and-analysis/tip/2021/GLOTIP\\_2020\\_Chapter5.pdf](https://www.unodc.org/documents/data-and-analysis/tip/2021/GLOTIP_2020_Chapter5.pdf).

# LIVE ONLINE CHILD SEXUAL ABUSE IN THE PHILIPPINES

Interpol reported that live online child sexual abuse for payment is increasing.<sup>35</sup> ECPAT pointed out that “law enforcement agencies around the world report that the majority of victims of live-streamed abuse over the Internet are based in South-East Asia, in particular the Philippines.”<sup>36</sup> The country has been considered by UNICEF, as well as other organizations, as the global epicenter of live online child sexual abuse.<sup>37</sup> In 2013, researchers from Terre des Hommes carried out research over a period of 10 weeks into 19 public chat rooms by acting as young Filipino girls. During this period of time, over 20,000 predators from various countries showed interest and sought to sexually engage online with the researchers posing as children. While the research suggested that the demand for live online child sexual abuse was significant in 2013, this phenomenon has significantly increased over the years and especially during the COVID-19 crisis.<sup>38</sup> According to Europol, “Cases of online CSE in the Philippines surged during the COVID-19 crisis, as the lockdown meant already poor families struggled to generate income and children did not go to school.”<sup>39</sup> Live online child sexual abuse has also taken off in the Philippines due to the increasing popularity of the internet and ICTs making it a relatively new phenomenon, although this is an established reality as Europol pointed out as early as 2015.<sup>40</sup>

In the Philippines, live online child sexual abuse primarily results from the trafficking of children for the purpose of sexual exploitation. The trafficking of children refers to the recruitment and/or transport, transfer, harboring, and receipt of a child by others

with the intent of exploiting the child through various means including sexual exploitation, labor exploitation, the removal of organs, offences committed under coercion and forced begging. In case of child trafficking, there is at least, an abuse of vulnerability linked to the age of the child and potentially linked with other means (force, fraud or coercion for instance). The notion of exploitation is crucial because this is a consistent feature of the trafficking of children regardless of the purpose. In the Philippines, child victims are sexually exploited primarily by their own parents or relatives, as well as peers or strangers for financial gain.

35. “Threats and Trends,” *Interpol*.

36. “Online child sexual abuse and exploitation Current forms and good practice for prevention and protection,” *ECPAT International*, June 2017: [https://ecpat-france.fr/www.ecpat-france/wp-content/uploads/2018/10/Revue-OCSE\\_ANG-min.pdf](https://ecpat-france.fr/www.ecpat-france/wp-content/uploads/2018/10/Revue-OCSE_ANG-min.pdf).

37. “Safe from harm: Tackling webcam child sexual abuse in the Philippines. Challenges protecting vulnerable children and prosecuting their abusers,” *Unicef*, June 3, 2016: <https://www.unicef.org/stories/safe-from-harm-tackling-webcam-child-sexual-abuse-philippines>.

38. “Webcam Child Sex Tourism, Becoming Sweetie: a novel approach to stopping the global rise of Webcam Child Sex Tourism,” *Terre des Hommes*, November 2013: <https://www.terredeshommes.org/webcam-child-sex-tourism-2/>.

39. “Internet Organised Crime Threat Assessment (IOCTA) 2020,” *Europol*: <https://www.europol.europa.eu/publications-events/main-reports/internet-organised-crime-threat-assessment-iocta-2020#downloads>.

40. “The Internet Organised Crime Threat Assessment (IOCTA) 2015,” *Europol*: <https://www.europol.europa.eu/publications-events/main-reports/internet-organised-crime-threat-assessment-iocta-2015>.

## Enabling Factors

Live online child sexual abuse is considered more prevalent in the Philippines than in other countries due to a series of enabling factors.

### WIDESPREAD USE OF TECHNOLOGY

According to the World Bank Group, 46.88% of individuals in the Philippines use the Internet.<sup>41</sup> The International Trade Administration estimates that the market of consumer electronics spending from 2020-2024 should reach \$8.1 billion. In this regard, the mobile device market is the largest by making up over 55% of all consumer electronics related spending and approximately 44 million individuals own smartphones. It is worth noting that the country's economy has been consistently growing for years and that 60% of its population is under 23 years old. Additionally, a new middle class is also emerging, which can afford the purchase of consumer electronics for the first time and is eager to own electronic mobile devices and computer hardware. These consumer electronics such as mobile phones may be considered as a necessity since they are used to send and receive money, in particular for the unbanked population.<sup>42</sup>

### SOLID MONEY SERVICE BUSINESS ("MSB") AND FINTECH INFRASTRUCTURE

The Philippines contains a robust MSB and Fintech infrastructure as millions of Filipinos live and work abroad around the world, and who use MSBs to provide financial support to their relative in the Philippines. It is worth mentioning that the emergence of a solid MSB and Fintech infrastructure is also brought about by technological evolution. According to the World Bank Group, the Philippines is among the top remittance recipients in the East Asia and Pacific region during 2020 and ranks second with 34.9 billion dollars of remittance.<sup>43</sup> Additionally, the remittance fees to the Philippines are among the lowest in East Asia and Pacific region.<sup>44</sup> MSBs in the Philippines often include the Filipino word "padala" which means *to relay, remit, send, transmit*.

### POVERTY

Victimization is more likely to be dominant among communities where there is a higher level of poverty or complete destitution. The majority of children become victims of their own parents and relatives, who are economically motivated by the need for money and push them into live online child sexual abuse due to irregular or seasonal income sources, or no permanent source of livelihood. Although the amount of money for watching and engaging in the live streaming of child sexual abuse is low, it is easy access to money and equivalent to days' or weeks' worth of the Philippine minimum wage, which entices facilitators and traffickers to engage in this criminal activity. According to the World Bank Group, the percentage of the population living below the national poverty line(s) accounts for 16.7% during the year 2018.<sup>45</sup>

The demand for live online child sexual abuse, however, comes from jurisdictions where disposable incomes are higher. Child sex offenders tend to be older men who have the means to afford to watch and engage in this criminal activity. As a result, poverty combined with the lucrative nature of the crime and the economic disparity between facilitators/traffickers and child sex offenders represent the main driving factor of live online child sexual abuse in the Philippines.

41. "Individuals using the Internet (% of population) – Philippines," *The World Bank*: <https://data.worldbank.org/indicator/IT.NET.USER.ZS?locations=PH>.

42. "Philippines Consumer Electronics," *International Trade Administration*, May 8, 2020: <https://www.trade.gov/market-intelligence/philippines-consumer-electronics>.

43. "Personal remittances, received (current US\$) – Philippines," *The World Bank*: <https://data.worldbank.org/indicator/BX.TRF.PWKR.CD.DT?locations=PH>.

44. "Resilience Covid-19 Crisis Through a Migration Lens Migration and Development Brief 34," *The Global Knowledge Partnership on Migration and Development*, May 2021: <https://www.knomad.org/publication/migration-and-development-brief-34#:~:text=Despite%20COVID%2D19%2C%20remittance%20flows,2019%20total%20of%20%24548%20billion>.

45. "Poverty headcount ratio at national poverty lines (% of population) – Philippines," *The World Bank*: <https://data.worldbank.org/indicator/SI.POV.NAHC?locations=PH>.

## ENGLISH LANGUAGE PROFICIENCY

The widespread use of the English language in the Philippines enables child sex offenders and child victims or facilitators/traffickers to easily communicate with each other, which facilitates live online child sexual abuse.

## Operational Structures of Live Online Child Sexual Abuse

There are three main types of operational structures with respect to live online child sexual abuse: individual operations, family-run operations, and larger-scale, more organized operations referred to as "cybersex dens." In the Philippines, individual and family-run operations comprise what is referred to as a "cottage industry", which is prevalent in impoverished areas. It is worth noting that these operational structures apply but may not be limited to live online child sexual abuse in the Philippines.

### INDIVIDUAL OPERATION

An individual operation refers to children who get involved in this activity on their own initiative without the direct involvement of a third party. These children may come from dysfunctional families characterized by a lack of parental supervision, poor parenting skills, physical and emotional abuse. They either find out by themselves and search for potentially interested individuals online via various online platforms, or they get involved because other peers influence them to get involved in such activity. The activity occurs either in private or public settings such as internet cafés. Children may have access to what is referred to as "pisonet", from the words "piso" or one peso, and "internet". In those internet cafés, the computer turns on for a limited amount of time once a peso coin is inserted in the slot. These "peso-computers" may be open all night and usually do not have an owner guarding the place. Children may also have access to internet cafés that have a private room, or simply shielded by a curtain.

These children are commonly also involved in prostitution and turn to this activity in order to supplement their income or to seek "older boyfriends" who may carry on long-term relationships and provide them with a more stable income. In case one of those activities does not generate income, they can switch to one or the other. Nevertheless, these children may face difficulties collecting money without a third party and due to their young age, lack of experience with MSBs and no proper documentation requirements, or poor English language skills to effectively communicate. Additionally, some children may not receive any payment at all from the individuals who sexually engage with them or because these children may hope that these individuals would become their "older boyfriend" after sexually engaging with them. It is worth highlighting that although children may get involved in this initiative on their own initiative, they are not responsible for their sexual exploitation and abuse.

### FAMILY-RUN OPERATION

A family-run operation refers to parents, relatives or other peers who coerce or force (their) children into live online child sexual abuse. They may also coerce or force them to recruit other children and are responsible for initiating contact with child sex offenders as well as claiming payments through MSBs. The activity primarily occurs in private settings depending on the availability of home computers. Family-run operations are mostly seen in very crowded communities where there is a higher level of poverty or complete destitution and where inhabitants are usually informal settlers or squatters. In those communities, individual operations are less common due to the fact that prostitution is less prevalent as a result of lesser traffic and no foreign individuals visiting such areas. It is worth noting that parents and relatives may pretend they are not aware that (their) children are involved in such activity while actually being aware of it. They also tend to turn a blind eye on the sexual abuse of (their) children as they urgently need income in order to survive. It is also worth recalling the misconception that when the sexual activity occurs online it does not amount to sexual abuse, as a result parents and relatives may think that it is not harmful for (their) children to be involved in such activity compared to prostitution.

Family-run operations generate more profits than individual operations. The payments for family-run operations are on average higher than the payments children receive in the context of individual operations, however, this is important to note that the traffickers receive most of the amount of money. This activity is a major source of income, which may be enormous for Philippine standards. They consider it as an easy and relatively harmless way to make money without recognizing the implications of this activity to the emotional wellbeing of child victims.

### ORGANIZED OPERATION



Organized operations, also referred to as "cybersex dens", are locations in which children are trafficked with the purpose of sexual exploitation.<sup>46</sup> These children may be lured into this activity by complete strangers offering them employment or a way to earn easy money, mainly via the internet and ICTs. The activity may occur in homebased settings that exploit multiple children from the same neighborhood and large-scale underground operations run by organized criminal groups including by foreign nationals. These underground operations may vary in size and degree of sophistication and be concealed behind front companies such as internet cafés.

## Characteristics of the Criminal Offence

### THE ROLE OF FACILITATORS

In the context of family-run and organized operations, facilitators coerce, force or recruit children and operate logistical requirements of running these operations such as finding venues for the operation, acquiring and using electronic devices and setting up payment methods. Facilitators may also communicate with child sex offenders, instruct children on how to act, provide them with clothes to entice more child sex offenders and desensitize children by exposing them to pornographic material. They may also record the sexual abuse inflicted on child victims and distribute it online.

Facilitators are primarily female individuals who are direct relatives of the child victims. In a study conducted by the International Justice Mission ("IJM") based on 141 facilitators identified by law enforcement in the Philippines, the majority of facilitators were female (66%), and their median age was 27 years. The sexual abuse in 71 cases investigated by law enforcement in the Philippines was primarily facilitated by their biological parents (41%) or other relatives (42%).<sup>47</sup> Similar results were identified in a study conducted by the Australian Institute of Criminology, which revealed that 15 of 20 facilitators were female and whose age ranged between 16 and 35 years (median being 20 years) for 12 of these facilitators.

The study also revealed that 24 of 38 cases involved a facilitator identified as a relative of the child victim, most commonly their mother (13), followed by their sister (8), a cousin (2) or an aunt (1). The rest of the facilitators were either not related to the child

<sup>46</sup>. "Undercover Asia: Philippines' children of the cybersex dens | Full episode," *CNA*, August 8, 2016: <https://www.youtube.com/watch?v=ZaHi3F78jPs>.

<sup>47</sup>. "Online Sexual Exploitation of Children in the Philippines: Analysis and Recommendations for Governments, Industry, and Civil Society," *International Justice Mission*, May 2020: <https://www.ijm.org/studies/full-length-report-online-sexual-exploitation-of-children-in-the-philippines-analysis-and-recommendations-for-governments-industry-and-civil-society>.

victims or the relationship was unknown. It is worth noting that some facilitators were also identified as child victims sexually exploited in the context of live online child sexual abuse. In this regard, they may be facilitators and victims simultaneously, or they may become facilitators as they approach or reach adulthood. As a result, some facilitators may also have experienced child sexual abuse.

The Australian Institute of Criminology also determined that facilitators were involved in 51 of the 145 cases of live online child sexual abuse. Child sex offenders were in contact with between one and eight facilitators, and the number of offences ranged between one and 14 per facilitator. More than half of child victims (51%) had a facilitator arrange their sexual abuse while the remaining child victims communicated directly with child sex offenders (49%).<sup>48</sup>

## HOW CHILD SEX OFFENDERS ACCESS CHILD VICTIMS

According to the Australian Institute of Criminology, child sex offenders involved in live online child sexual abuse access child victims in mainly three different ways: by establishing relationships and contact with Filipino locals; by proactively contacting potential child victims and facilitators through social media or dating sites; or by receiving unsolicited offers from facilitators and child victims.

In the first scenario, the child sex offender may form relationships with Filipino locals during trips to the Philippines. They may maintain contact online with the Filipino locals once they returned in their country and then request and/or receive offers to engage in live online child sexual abuse with the children related to or known to their contacts. It is worth bearing in mind that these individuals may also be transnational child sex offenders who may have sexually abused child victims during their trip.

In the second scenario, the child sex offender may form relationships with women online via social media or on dating websites, especially focused on Asian women (e.g., *dateinasia.com*). When they form an intimate online relationships with the women and/or pay them to engage in live online sexual activity, they may ultimately request and/or receive offers to engage in live online child sexual abuse

with the children related to or known to the women. By contrast, the child sex offender may contact (in a “spamming way”) multiple potential facilitators and/or child victims and engage with those who subsequently accept to connect.

In the third scenario, the child sex offender receives unsolicited offers for engaging in live online child sexual abuse from facilitators and directly from child victims. However, it is worth highlighting that the majority of contacts are made by child sex offenders themselves. The fact that child victims may proactively contact child sex offenders can be attributed to poverty. In this regard, child victims may agree to their own sexual abuse and exploitation or be motivated to recruit other family members or their peers. This factor results in child sex offenders taking advantage of the financial vulnerability of child victims for their own sexual gratification.

## NEGOTIATION AND/OR AGREEMENT

Child sex offenders may negotiate or bargain with facilitators and/or child victims. These negotiations revolve around the sexual acts to be carried out, the age, sex and number of children as well as the payment methods and price for the sexual abuse to take place.

## THE PAYMENT

The amount of money that children earn depends on the type of operation, the content and length of the session as well as the age and number of children involved. On average, children earn between 500 and 2000 Php (\$11.50 and \$46 USD) per session, however, some child victims may not earn any money at all in case the facilitators collect the money for themselves or if the child sex offenders fail to keep their promise to make the payment. In the context of family-run and organized operations, children earn on average 200 Php (\$ 4.60 USD). The payments are conducted primarily through MSBs.

48. Napier S, Teunissen C & Boxall H 2021. How do child sexual abuse live streaming offenders access victims? Trends & issues in crime and criminal justice no. 642. Canberra: Australian Institute of Criminology. <https://doi.org/10.52922/ti78474>.

## THE LIVE ONLINE CHILD SEXUAL ABUSE SESSION

Live online child sexual abuse sessions can take place in private or public spaces through electronic devices. The younger child victims who do not speak English may use translating tools such as Google Translate to communicate with child sex offenders, or the facilitators may be responsible for communicating with them in case the children are unable to communicate due to their very young age or if they are ordered to engage in sexual acts.

The content of the session depends on the child sex offender's demand and the amount of money they are willing to send as well as what the child victims or facilitators accept to do. In this regard, the sessions may be performed by one child, multiple children or children and adults. These sessions may vary from acting in sexually suggestive ways, showing one's naked body and genitals to

masturbating and sexually engaging with other child victims or adults. Child victims may engage in simulated or real sexual acts with other child victims or adults through various forms of sexual activity such as masturbation, oral, vaginal/anal sex. These sexual acts can also amount to sexual acts involving paraphilias such as sadism or zoophilia.

Child sex offenders are mainly seeking child victims between the age of 10 and 18, however, it is important to note that child victims of all ages may be sexually abused including infants. In this regard, the younger child victims and the more extreme sexual acts are, and the more a child sex offender is likely to pay.

The sessions of live online child sexual abuse usually last 15 and 30 minutes, and child sex offenders may be required to pay in order to continue participating in the session or to participate in another one.



# LIVE ONLINE CHILD SEXUAL ABUSE IN THE GLOBAL NORTH

It is important to emphasize that live online child sexual abuse is not limited to the Philippines or countries of the Global South. Additionally, since this is an underreported crime, it is difficult to accurately assess its prevalence. In the context of live online child sexual abuse resulting from the solicitation of children for sexual purposes and in self-generated sexual content/material involving children, child victims are primarily from the Global North, especially North America and Europe.<sup>49</sup> IWF conducted a study on the distribution of CSAM of live online child sexual abuse showing that this is uncommon to encounter CSAM in which child victims appear to be from the Global South such as Southeast Asia (e.g., Philippines), where children are often sexually exploited by traffickers and facilitators (commonly a family relative). According to IWF, this material predominantly involves girls aged 13 years old or under from the Global North, in a home setting (e.g., in their own bedroom, bathroom) and without the physical presence of any adult individual. As a result, it is important to avoid narrowing typification of live online child sexual abuse as a crime that only occurs and affects children from countries of the Global South.

It is also worth highlighting that live online child sexual abuse may be considered as a first step for children to get involved in a form of child sexual exploitation offline (e.g., exploitation of children in/for prostitution)<sup>50</sup> or to produce CSAM in exchange for payment. In this regard, WeProtect highlighted that:



Reports of commercially motivated ‘self-production’ are emerging worldwide [and that] NCMEC has highlighted cases of missing children later discovered to be selling their sexual material on subscriber platforms, and found evidence of a link to organised exploitation and trafficking. [Additionally,] Netclean’s 2020 survey of global law enforcement found that some had already seen a rise in ‘self-production’ “in exchange for money” during the pandemic, while others predicted a continuation of the trend as conditions of economic hardship worsen, as a way for children “to make money for things they could otherwise not afford.”<sup>51</sup>

49. “Trends in Online Child Sexual Exploitation: Examining the Distribution of Captures of Live-streamed Child Sexual Abuse,” *Internet Watch Foundation*, May 15, 2018: <https://www.iwf.org.uk/about-us/why-we-exist/our-research/>.

50. “What Works to Prevent Online and Offline Child Sexual Exploitation and Abuse? Review of national education strategies in East Asia and the Pacific,” *Unicef*, 2020: <https://www.sddirect.org.uk/media/1874/what-works-to-prevent-online-and-offline-csae-in-east-asia-and-the-pacific.pdf>.

51. “Global Threat Assessment 2021,” *WeProtect Global Alliance*, p. 57.

## Live Online Child Sexual Abuse and the Solicitation of Children for Sexual Purposes

Live online child sexual abuse may result from the solicitation of children for sexual purposes in the form of grooming for sexual purposes and the sexual extortion of children. Child sex offenders may lure or incite child victims in order to sexually engage with them and/or to obtain self-generated sexual content/material ("SGSC"). They may also blackmail child victims with the help of the SGSC obtained in order to sexually engage with them and/or to coercing them into continuing to produce SGSC and/or performing distressing acts under threat of exposure to others of the material that depicts them. This type of blackmailing may involve more extreme, violent, sadistic and degrading demands by child sex offenders. The SGSC obtained may therefore become the basis of ongoing sexual abuse and exploitation.

The NCMEC reported a 97.5% increase of CyberTipline reports during the year 2020 regarding the solicitation of children for sexual purposes compared to the year prior.<sup>52</sup> In the same regard, Netclean also reported a similar increase through a survey of 470 police officers from 39 countries. According to the survey, "Eight in ten police officers reported an increase (considerable or moderate) in perpetrators attempting to contact children online" and mentioned "Attempts to contact children through live streaming apps used for school."<sup>53</sup> On the basis of Childline counselling sessions, the National Society for the Prevention of Cruelty to Children ("NSPCC") highlighted that children reported having been approached by strangers on different types of online platforms including social media networks (e.g., Facebook, Instagram, Snapchat), instant messaging applications (e.g., Discord, Kik, WhatsApp), livestreaming platforms (e.g., Twitch, Yubo), and voice or text chat services built into online multiplayer games (e.g., Fortnite Battle Royale). Some child sex offenders may pretend to be their peers by posing as children and create fake personas in order to communicate and establish a relationship with children with the aim of sexually

engaging with them or making them perform sexual acts in order to obtain SGSC.<sup>54</sup> Among the findings of a survey of 25,101 children aged between 9 and 16 from 19 European countries, the EU Kids Online network pointed out that socially connecting with someone unknown online is in fact a common experience for 37% of children.<sup>55</sup> Social interaction is at the core of online game platforms as users or players seek to build virtual relationships, which are often paramount in the context of online gaming. In fact, some gaming platforms are growing into full-fledged social networks and interactions between adults and children are relatively normalised. These gaming platforms also integrate built-in audio and video chat enabling gamers to livestream as they play.

The NCMEC reported that 42% of the reports involving the sexual extortion of children, multiple online platforms were used. Typically, child sex offenders approach children on social media platforms and public or group spaces where they can communicate, establish a relationship and learn personal information about children. Then, child sex offenders switch to private or anonymous messaging, video chat or livestream applications where they can capture SGSC. Child sex offenders may threaten children to disclose this material unless child victims produce more SGSC (78%), pay them money (7%) or physically meet in order to engage in sexual activity (5%).<sup>56</sup> There are even some online communities of child sex offenders who attempt to track down and identify child

52. "Online enticement reports skyrocket in 2020," *National Center for Missing & Exploited Children*, January 21, 2021: <https://www.missingkids.org/blog/2021/online-enticement-reports-skyrocket-in-2020>.

53. "Netclean Report – Covid-19 Impact 2020," Insight 2, Online child sexual abuse activity has increased, *Netclean*: <https://www.netclean.com/netclean-report-2020/insight-2/>.

54. "The impact of the coronavirus pandemic on child welfare: online abuse," *NSPCC Learning*, 2020: <https://learning.nspcc.org.uk/research-resources/2020/coronavirus-insight-briefing-online-abuse>.

55. "EU Kids Online 2020: Survey Results from 19 Countries," *EU Kids Online*, 2020: <https://www.lse.ac.uk/media-and-communications/assets/documents/research/eu-kids-online/reports/EU-Kids-Online-2020-10Feb2020.pdf>.

56. "Trends identified in CyberTipline sextortion reports," *National Center for Missing and Exploited Children*, 2016: <https://www.missingkids.org/content/dam/missingkids/pdfs/ncmec-analysis/sextortionfactsheet.pdf>.

victims whose SGSC had been distributed online in order to sexually extort them.<sup>57</sup> The main enabling factor is the extensive digital “footprints” left online by children, which has “transformed the ability of offenders to access, control, manipulate, share, discuss, plan, co-ordinate and facilitate online child sexual abuse. For victims and survivors, it can trap them in an inescapable and manipulated environment, where the power dynamic is weighted heavily to the offender who can blackmail, threaten, coerce and control them 24/7.”<sup>58</sup>

## Self-Generated Sexual Content/Material Involving Children

This term refers to self-generated sexualized content or material (whether illegal or not, and whether coerced or not) involving children. Alternative terms to “self-generated sexual content/material involving children” may include: “self-generated indecent images of children” or “self-generated intimate images”, however it is recommended to avoid adding the terms “indecent” or “intimate”. The former hardly refers to an objective criterion and involves a subjective value judgement (i.e., who has the authority to define what is morally offensive or not?), while the latter refers to material which is private or personal.

IWF reported an exponential increase in SGSC involving children.



Of the 153,369 webpages actioned during 2020, almost half (68,000 or 44%) were assessed as containing self-generated imagery. This is a 16% increase on the total number of reports actioned in 2019, when 132,676 webpages were actioned. Of these, 38,424 were assessed as containing self-generated imagery. This represents a 77% increase from 2019 to 2020 in the proportion of actioned webpages displaying self-generated imagery.<sup>59</sup>

IWF highlighted that this material is mainly produced using electronic devices and online platforms integrating webcams and livestreaming features as well as by means of manipulation or blackmail involving adult individuals posing as children. IWF observed that this material involved children that were potentially reading instructions and shown sexual material to imitate. In some instances, children were taking part in a game or “dare”. IWF also observed a disturbing trend of child sex offenders coercing children into sexually engaging with their own siblings.<sup>60</sup> When this material is captured, it can be distributed across various online platforms and be recirculated indefinitely after they were originally created.<sup>61</sup> IWF identified that this material is predominantly shared via cyberlockers (59%) and image hosts (23%) as well as forums (10%). These cyberlockers and image hosts act as “storage” for this material appearing on dedicated websites or shared within forums, which may contain several thousands of images/videos.<sup>62</sup>

IWF also found that 86% of the material depicting children aged 15 and under had been captured from a live webcam stream and that 73% of the material appeared on 16 dedicated forums with the purpose of advertising paid downloads of videos of live online child sexual abuse from third

57. “‘Grave threat’ to children from predatory internet groomers as online child sexual abuse material soars to record levels,” *Internet Watch Foundation*, January 12, 2021: <https://www.iwf.org.uk/news-media/news/grave-threat-to-children-from-predatory-internet-groomers-as-online-child-sexual-abuse-material-soars-to-record-levels/>.

58. “Child Dignity Alliance, Technology Working Group Report,” *Child Dignity in the Digital World*: <https://www.childdignity.com/technical-working-group-report>.

59. “The Annual Report 2020,” Self-generated child sexual abuse, *Internet Watch Foundation*: <https://annualreport2020.iwf.org.uk/trends/international/selfgenerated>. See also “Our live-streaming report: The case studies,” *Internet Watch Foundation*, May 15, 2018: <https://www.iwf.org.uk/news-media/news/our-live-streaming-report-the-case-studies/>.

60. “The Annual Report 2020,” Self-generated sibling abuse, *Internet Watch Foundation*: <https://annualreport2020.iwf.org.uk/trends/casestudies/selfgenerated>.

61. See for example Ella’s Story in “Global Threat Assessment 2021,” *WeProtect Global Alliance*, p.52.

62. “The Annual Report 2020,” *Internet Watch Foundation*: <https://annualreport2020.iwf.org.uk/trends/international/sitetypes>.

party cyberlockers<sup>63</sup> and image hosts.<sup>64</sup> These online platforms may enable child sex offenders to financially profit from the sexual exploitation of children as they receive money for the download of this material by other subscribers. By contrast, ECPAT highlighted that law enforcement agencies ("LEAs") attributed the increase of this material to the fact that "newly produced never before seen CSAM [can] be used as a currency in further trade".<sup>65</sup> In this regard, child sex offenders may distribute this material within networks of like-minded individuals in order to exchange and/or to have access to CSAM on dedicated websites. As a result, child sex offenders may capture SGSC produced in the context of live online child sexual abuse sessions either for their own sexual gratification and/or for financial profit.

## Capping

This way of producing new material by recording or capturing footage of child victims performing sexual acts in real time online without their knowledge or consent is referred to as "capping". Any child performing sexual acts on camera can be the victim of capping, moreover the "children involved in 'coerced self-production' may not perceive themselves to be victims, and may potentially view their own actions as voluntary."<sup>66</sup> Additionally, the children may have any understanding of the sexual nature of what they were doing.<sup>67</sup> It is therefore important to emphasize that being victim of this practice is not the fault of the child whose sexual acts are captured, but of the child sex offender doing the capping.

Europol reported that law enforcement agencies have observed the exchange of this material as well as new "capped" material on Dark Web forums.<sup>68</sup> According to Europol, this material is listed under categories such as "spycams", "webcams" and "live streams". Europol also observed in a monitored dark web forum that "a section specifically for those capturing this live stream footage, known as 'cappers', saw the numbers of messages and threads more than triple from 500 messages from December 2019 to February 2020, to 1 500

from March to May 2020." Similarly, the volume of this material also increased significantly during the same period of time. Europol observed that on another dark web forum, "the number of files made available increased by almost 50% and in another case, it almost doubled." In some instances, the distribution of this material may relate to 'competitions' organized on these dark web forums in order to gather and promote SGSC captured from livestreaming sessions.<sup>69</sup> In one case, a dark web forum monitored by law enforcement holds monthly competitions and "capping battles", where child sex offenders distribute CSAM.<sup>70</sup>

The phenomenon of capping has sharply increased according to multiple law enforcement agencies as well as civil society and reinforces previous concerns about the increase of SGSC online. The act of recording without the knowledge or consent of the child victims as well as the further dissemination of SGSC from livestreaming sessions is considered as an alarming threat.<sup>71</sup> In this regard, "the Australian Centre to Counter Child Exploitation has identified 'capping' as the most problematic current offending trend, which is generating approximately 60-70% of referrals to its Victim Identification Unit."<sup>72</sup>

**63.** A cyberlocker is a third-party online service that provides file-storing and filesharing services for various types of media files and data, including a service that requires a premium account to download either faster or simultaneously. Such services are also called one-click hosters.

**64.** "Trends in Online Child Sexual Exploitation: Examining the Distribution of Captures of Live-streamed Child Sexual Abuse," *Internet Watch Foundation*, May 15, 2018: <https://www.iwf.org.uk/about-us/why-we-exist/our-research/>.

**65.** "Online child sexual abuse and exploitation Current forms and good practice for prevention and protection," *ECPAT International*, June 2017: [https://ecpat-france.fr/www.ecpat-france/wp-content/uploads/2018/10/Revue-OCSE\\_ANG-min.pdf](https://ecpat-france.fr/www.ecpat-france/wp-content/uploads/2018/10/Revue-OCSE_ANG-min.pdf).

**66.** "Global Threat Assessment 2021," *WeProtect Global Alliance*, p.55.

**67.** "The Annual Report 2020," Self-generated sibling abuse, *Internet Watch Foundation*: <https://annualreport2020.iwf.org.uk/trends/casestudies/selfgenerated>.

**68.** IOCTA 2021.

**69.** "Exploiting Isolation," *Europol*.

**70.** "Global Threat Assessment 2021," *WeProtect Global Alliance*, p. 42.

**71.** IOCTA 2021.

**72.** "Global Threat Assessment 2021," *WeProtect Global Alliance*, p. 42.

ECPAT points out that "images taken voluntarily by children [in particular adolescents] that are not shared beyond trusted partners or friends may not have negative consequences [and that] some children say [...] that self-produced images provide advantages in their relationships and/or increased self-esteem. And today, this is a normal phenomenon for many children."<sup>73</sup> Nevertheless, although children may willingly produce sexual material (e.g., in a loving relationship), this does not mean they consent to or are responsible for the abusive or exploitative use and/or distribution of this material. It is therefore important to consider the potential reasons behind the production of this material such as the potential solicitation of children for sexual purposes. There is a possibility that another individual has dictated the sexual acts depicted, and this is especially the case when much younger children appear in such content.<sup>74</sup> As WeProtect highlights, "understanding the context of production and / or sharing is critical to ensure the response can be appropriately tailored; therefore, a case-by-case approach is always required."<sup>75</sup>

While this conduct in itself is not necessarily illegal or socially unacceptable, there are inherent risks that such material can be circulated online or offline, which harms children. It is important to emphasize that the term "self-generated" should not stigmatize, implicitly or inadvertently, the child for the abuse and exploitation that may result from the generation of this content or material against their will. In this regard, child victims should not face criminal liability for their role in producing or making available the material and some legislations require reform to prevent the criminalization of children for this behavior, which can be partly attributed to the normal discovery of sexuality". The Lanzarote Convention may serve as the legal basis for reforming these legislations as it includes a provision allowing Member States to criminalize or not certain acts "involving children who have reached the age [...] where these images are produced and possessed by them with their consent and solely for their own private use."<sup>76</sup> As a result, this approach allows Member States to determine what is the most appropriate response towards children and adolescents involved in self-generating, viewing or sharing sexual content.

## Potential Disparities in Live Online Child Sexual Abuse Sentences

It is crucial to ensure that child victims receive fair justice whether they had been sexually abused in countries of the Global North or in countries of the Global South. It appears that sentences appear to be higher in countries of the Global North than when it comes to other jurisdictions, especially countries of the Global South. For example, IJM urged "*the UK Government to examine* this disparity in sentences between demand-side offenders of Filipino victims (average prison period of 2 years, 4 months) and demand-side offenders of UK victims (average prison period of 6 years, 1 month) for what appears to be similar offending."<sup>77</sup> This disparity in sentences may send the message that committing acts of sexual abuse towards children from foreign jurisdictions is less harmful than in countries of the Global North. Moreover, it may also send the message to perpetrators that they can commit

<sup>73</sup>. "The Circulation of Sexual Images Taken by Children Themselves on the Rise amongst Offenders," *ECPAT International*, November 18, 2020: <https://ecpat.exposure.co/end-child-sex-abuse-day-2020>. It is worth noting that adults may have preconceived opinions on this phenomenon due to the media mostly relaying negative stories. Although material which is not shared beyond trusted individuals may have no negative consequences, it is important to consider the inherent risks of this phenomenon and that in some countries it can be considered as a criminal offence.

<sup>74</sup>. See "'Deeply dark criminal activity' drives rise in child abuse images online," *The Guardian*, December 3, 2020: <https://www.theguardian.com/global-development/2020/dec/03/deeply-dark-criminal-activity-drives-rise-in-child-abuse-images-online>.

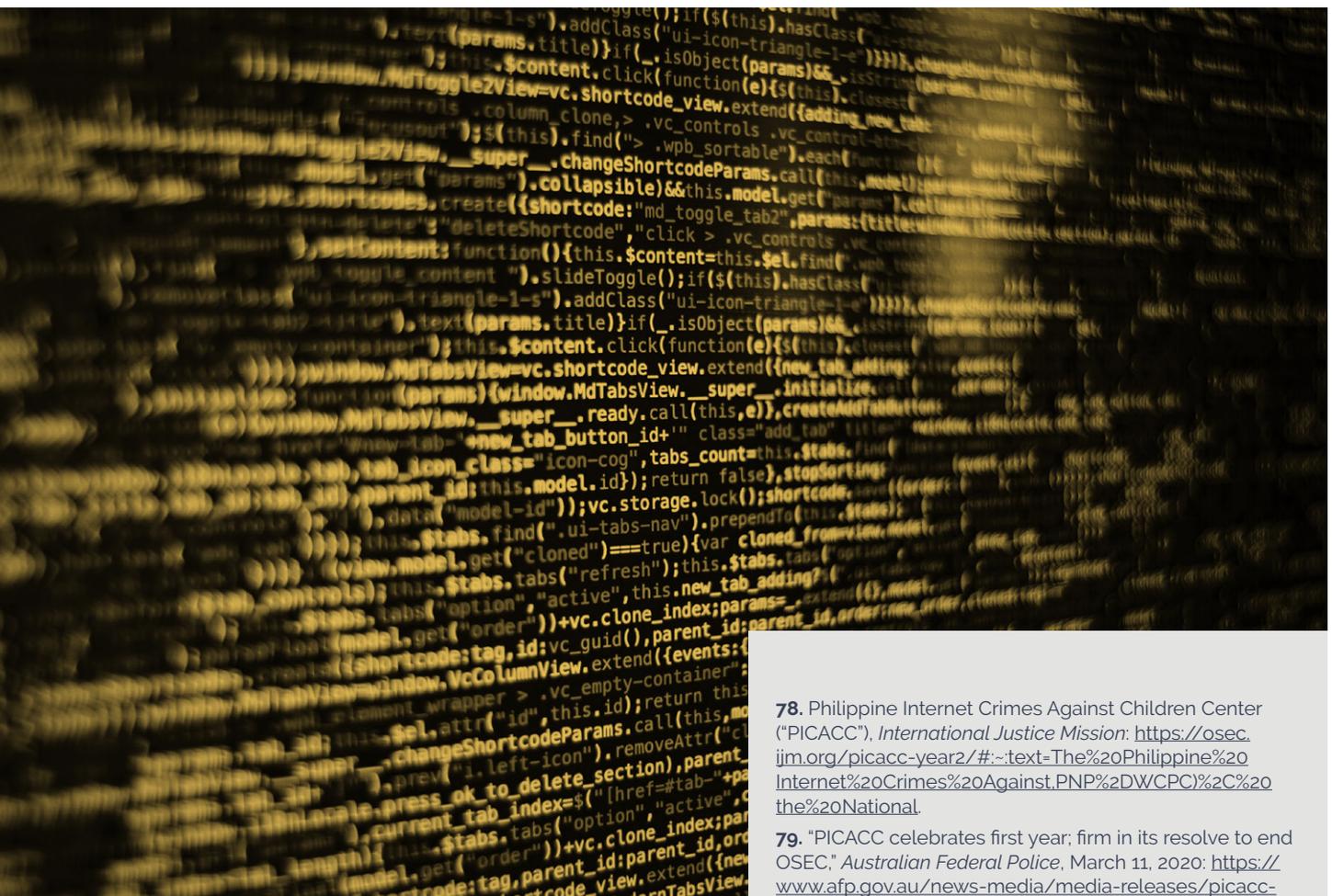
<sup>75</sup>. "Global Threat Assessment 2021," *WeProtect Global Alliance*, p. 55.

<sup>76</sup>. "Protection of Children against Sexual Exploitation and Sexual Abuse," Article 20 – Offences concerning child pornography, *Council of Europe*: <https://www.coe.int/en/web/children/lanzarote-convention>.

<sup>77</sup>. "Falling Short: Demand-Side Sentencing for Online Sexual Exploitation of Children, Composite Case Review, Analysis, and Recommendations for the United Kingdom," *International Justice Mission*, October 2020: <https://www.ijmuk.org/documents/IJM-REPORT-FALLING-SHORT-Demand-Side-Sentencing-for-Online-Sexual-Exploitation-of-Children-Composite-Case-Review-Analysis-and-Recommendations-for-the.pdf>, p. 33.

acts of sexual abuse towards foreign children with impunity and that committing these acts may result in low sentences. This disparity may be partly due to the fact that it is easier for law enforcement practitioners to obtain evidence in their own jurisdiction where the child victims had been sexually abused as well as to prosecute the perpetrators of the crime who committed these acts in the same jurisdiction. Nevertheless, it is worth pointing out that there are some existing resources such as the Philippine Internet Crimes Against Children Center ("PICACC"), which is "a model for an enhanced global response against OSEC, is a cooperation among local and international law enforcement, namely the Philippine National Police's Women and Children Protection Center ("PNP-WCPC"), the National Bureau of Investigation's Anti-Human Trafficking Division ("NBI-AHTRAD"), the Australian

Federal Police ("AFP"), and the United Kingdom National Crime Agency ("NCA"); in partnership with the non-government organization IJM."<sup>78</sup> The PICACC may maximize collaboration for evidence sharing by providing equipment, training, case referrals, and other partnership to Philippine law enforcement. In its first year, the PICACC had 41 operations leading to the rescue of 136 victims and children-at-risk of OSEC and the arrest of 41 suspected OSEC in-person traffickers.<sup>79</sup>



78. Philippine Internet Crimes Against Children Center ("PICACC"), *International Justice Mission*: [https://osec.ijm.org/picacc-year2/#:~:text=The%20Philippine%20Internet%20Crimes%20Against,PNP%2DWPCPC\)%2C%20the%20National](https://osec.ijm.org/picacc-year2/#:~:text=The%20Philippine%20Internet%20Crimes%20Against,PNP%2DWPCPC)%2C%20the%20National).

79. "PICACC celebrates first year; firm in its resolve to end OSEC," *Australian Federal Police*, March 11, 2020: <https://www.afp.gov.au/news-media/media-releases/picacc-celebrates-first-year-firm-its-resolve-end-osec>.

# EUROPEAN LEGISLATION

At the European level, the *Council Decision of 29 May 2000 to combat child pornography on the Internet* and the *Directive 2011/93/EU* can provide the basis for the creation of new national legislation to combat sex-based crimes against children and address various forms of child sexual abuse and exploitation, including the phenomenon of live online child sexual abuse. In addition to addressing sex-based crimes against children from the perspective of criminal law, it is important to consider these crimes from the perspective of human rights in order to ensure that national legislations protect child victims in addition to punishing child sex offenders. It is worth highlighting that children are the most vulnerable members of society and require the highest level of protection, especially in a hyperconnected world where perpetrators of sex-based crimes against children are able to use ICTs to sexually abuse and exploit children anywhere in the world. Live online child sexual abuse is a technology-enabled crime and a transnational phenomenon, and it has been considered as an established reality by Europol since 2015.<sup>80</sup> The Council Decision states that Member States are required to keep their national legislation pertaining to child sexual abuse and exploitation provisions up to date on the basis of technological advancements and to enact new legislation if the existing one is deemed insufficient to tackle new forms of child sexual abuse and exploitation such as live online child sexual abuse.<sup>81</sup> In the same regard, the Directive acknowledges the critical role of ICTs in the increasing spread of child sexual abuse and exploitation and require Member States to prevent the use of ICTs to commit sex-based crimes against children.<sup>82</sup>

The Directive is the main legal instrument in the European Union addressing child sexual abuse and exploitation. It establishes minimum core definitions of sex-based crimes against children, minimum levels of penalties as well as provisions on child victim protection. The Directive is also the first legal instrument to define the term "pornographic performance". The Directive defines "pornographic performance" as "a live exhibition aimed at an audience, including by means of information and communication technology, of: (i) a child engaged in real or simulated sexually explicit conduct; or (ii) the sexual organs of a child for primarily sexual purposes".<sup>83</sup> This is an important milestone because the Directive acknowledges and addresses this new form of child sexual abuse and exploitation, namely live online child sexual abuse. The Directive also criminalizes the following criminal offences in relation to "pornographic performances":

**80.** "Live streaming of child sexual abuse is an established harsh reality," *Europol*, October 13, 2016: <https://www.europol.europa.eu/newsroom/news/live-streaming-of-child-sexual-abuse-established-harsh-reality>.

**81.** "Council Decision of 29 May 2000 to combat child pornography on the Internet," *Official Journal of the European Union*, Article 4: "Member States shall regularly verify whether technological developments require, in order to maintain the efficiency of the fight against child pornography on the Internet, changes to criminal procedural law, while respecting the fundamental principles thereof and, where necessary, shall initiate appropriate new legislation to that end": <https://eur-lex.europa.eu/eli/dec/2000/375/oj>.

**82.** Directive 2011/93/EU," Paragraphs 3 and 12, Articles 6 and 25.

**83.** "Directive 2011/93/EU," Article 2(e) Definitions.



2. *Causing or recruiting a child to participate in pornographic performances, or profiting from or otherwise exploiting a*

*child for such purposes shall be punishable by a maximum term of imprisonment of at least 5 years if the child has not reached the age of sexual consent and of at least 2 years of imprisonment if the child is over that age.*

3. *Coercing or forcing a child to participate in pornographic performances, or threatening a child for such purposes shall be punishable by a maximum term of imprisonment of at least 8 years if the child has not reached the age of sexual consent, and of at least 5 years of imprisonment if the child is over that age.*

4. *Knowingly attending pornographic performances involving the participation of a child shall be punishable by a maximum term of imprisonment of at least 2 years if the child has not reached the age of sexual consent, and of at least 1 year of imprisonment if the child is over that age.*<sup>84</sup>

Nevertheless, it is worth pointing out that the definition does not acknowledge the types of sexual acts that may be carried out such as the engagement of children in real or simulated sexual acts with other children or adult individuals. This may constitute a gap in the definition whether child victims are sexually abused by adult individuals or engaging in simulated sexual activity with adult individuals. Additionally, live online child sexual abuse may result from the solicitation of children for sexual purposes and occur between a child sex offender and the child victim. In this regard, the "pornographic performance" is not aimed at an audience and rather refers to cases of live online child sexual abuse resulting from the trafficking of children for sexual purposes.

It is also worth pointing out that the notion "knowingly" imposes criminal liability only if the crime is committed intentionally. The challenge that arises from this notion is how to prove the intention of attending "pornographic performances", especially in cases where traffickers and facilitators are proactively reaching out to child sex offenders who may sexually engage with children if given the

opportunity. In this regard, it is worth stressing that there should be no accidental access to live online child sexual abuse since the acts are requested/ordered beforehand. The notion of intention can be deduced from the chat logs between child sex offenders and traffickers or facilitators (e.g., negotiation, agreement, etc.), the solicitation of children for sexual purposes, the payment for the sexual abuse to take place, and the reoccurrence of the criminal offence.

Furthermore, the term "attending" may not accurately reflect the reality of live online child sexual abuse and may provoke misconceptions. This term implies that child sex offenders are only attending passively the "pornographic performances" by means of ICTs without being directly involved in the sexual abuse of children. In fact, they take an active role by requesting and/or directing the sexual abuse of children, by paying in order to engage in such activity, or by grooming and/or sexually extorting children with the aim of sexually abusing them. These child sex offenders want to be in control of the acts of sexual abuse carried out in real time because "attending" as well as the consumption of child CSAM may not be enough. They decide *what* is done to children and they determine the severity of the acts carried out as well as the length of the sexual abuse. Additionally, the fact that these child sex offenders engage in such activity by means of ICTs should be considered as an aggravating factor. It shows the active role they take in the sexual abuse of children by being able to identify and target child victims from virtually anywhere. Furthermore, it demonstrates their intent to commit sex-based crimes against children without exposing themselves by committing such offences physically and in public settings, as well as a certain level of planning (grooming, payment, etc.). As a result, child sex offenders take an active part in the sexual abuse of children and the fact that they do so by means of ICTs should be considered as an aggravating factor.

For example, in the case of Regina V Michael Anthony Charnley, the use of ICTs was successfully considered as an aggravating factor in the

84. "Directive 2011/93/EU," Article 4 Offences concerning sexual exploitation.

commitment of the crime of live online child sexual abuse. This case summarizes as follow:



*On 35 occasions, over a period of about ten weeks, between June 2009 and the date of his arrest, the defender used the internet to contact adults in the Philippines. He agreed to pay them, to use a password and to obtain children, aged between 2 and 17, so that he could view, in real time, the abuse for which he asked. He typed out instructions on his computer, explained what he required to be done to those children and recorded the events. He would contact the individuals, issue the instructions and engage in dialogue, having agreed to pay and give a password, as to the sexual activity in which he wished the other adult and the child to engage. He then downloaded those images. The police were able to examine the 'chat logs' which showed the offender's manipulation and incitement of the sexual activity.<sup>85</sup>*

The child sex offender pleaded guilty and was initially sentenced to five years of imprisonment by the Crown Court for making indecent photographs of a child (19 counts), causing or inciting a child under 13 to engage in non-penetrative sexual activity (3 counts), and causing or inciting a child under 13 to engage in penetrative sexual activity (1 count). However, the Attorney General pointed out that the use of ICTs was considered as a mitigating factor while it should have been considered as an aggravating one due to the same reasons stated hereabove. In addition, the Attorney General highlighted the active role the child sex offender played by identifying and targeting particularly vulnerable children from the Philippines and how such a low conviction for such severe criminal acts would have been received within society in the United Kingdom. As a result of the opposition to the initial verdict at the Court of Appeal, the child sex offender's sentence was increased to 12 years.<sup>86 87</sup>

This decision aligns with the Directive<sup>88</sup>, which states that such serious forms of sexual abuse and exploitation should be criminalized effectively and that convictions should be dissuasive and proportionate to the crimes committed. In this

regard, the Directive specifies that sex-based crimes against children which are facilitated by ICTs are particularly serious.<sup>89</sup> Although it is not specifically mentioned in this provision, live online child sexual abuse should be considered as a serious form of child sexual abuse and exploitation in accordance with the Directive because it is a technology-enabled crime and ICTs are the core elements that enable child sex offenders to sexually abuse children in real time.

It is also important to point out that the offence of knowingly attending pornographic performances results in mere punishment: i.e., two years of imprisonment if the child has not reached the age of sexual consent, and of at least one year of imprisonment if the child is over that age. This offence does not reflect the aspects outlined hereabove, namely the fact that perpetrators take an active role in the sexual abuse of children occurring in real time.

**85.** "Regina V Michael Anthony Charnley," England and Wales Court of Appeal, Criminal Division, June 17, 2010: <https://www.casemine.com/judgement/uk/5a8ff70c-60d03e7f57ea6c0a#>.

**86.** "Protecting children," Court of Appeal, Criminal Division, August 11, 2010: <https://www.thetimes.co.uk/article/protecting-children-gzxdgd27d88>.

**87.** "Denbigh child porn director Michael Charnley has sentence doubled," NorthWalesLive, June 18, 2010: <https://www.dailypost.co.uk/news/north-wales-news/denbigh-child-porn-director-michael-2753788>.

**88.** While United Kingdom was still a member of the European Union.

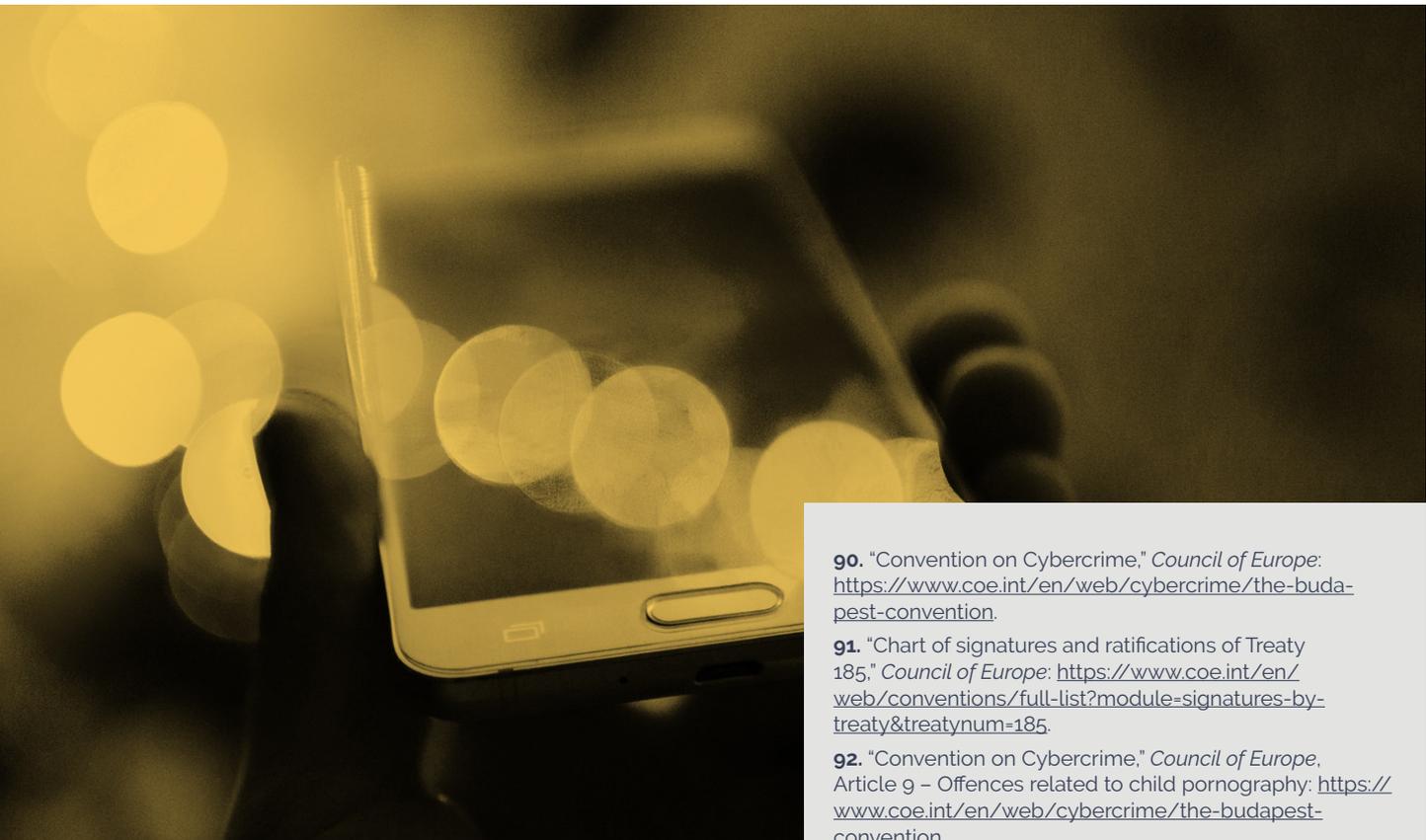
**89.** "Directive 2011/93/EU," Recital 12.

## Council of Europe Legislation on Cybercrime

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The Council of Europe established the Convention on Cybercrime (also known as the Budapest Convention) in order to implement a cooperative and uniform approach to address cybercrime.<sup>90</sup> This is the first international legal instrument setting a global standard on cybercrime and addressing the threat of ICTs being used to commit various types of conventional crimes as well as new forms of crimes that rely on the use of ICTs. As of January 2022, a total of 66 countries have ratified the Budapest Convention.<sup>91</sup> While the Directive may provide the basis for the creation of new national legislation to combat sex-based crimes against children, the Budapest Convention may enable State Parties to create new national legislation to combat sex-based crimes against children which have a nexus to ICTs. The Budapest Convention recommends States Parties to criminalize online child sexual abuse and exploitation by providing a comprehensive set of criminal offences including

the production, offering, distribution, procurement and possession of CSAM via a computer system.<sup>92</sup> While the Budapest Convention criminalizes the distribution and transmission of CSAM which is applicable to live online child sexual abuse, it only addresses and punishes individuals who are involved in the supply side of this phenomenon. There is no clear mention of the criminalization of engaging or viewing live online child sexual abuse without the possession of CSAM. Additionally, there is no mention of the criminalization of soliciting children for sexual purposes, which may result in live online child sexual abuse. In this regard, it is worth emphasizing that the creation of new legislation should be as comprehensive as possible and criminalize the whole chain of this phenomenon by addressing the demand as well. Although the Budapest Convention does not specifically address live online child sexual abuse, it still represents an important international legal instrument in order to address the use of ICTs to commit sex-based crimes against children. This is of paramount importance in the context of live online child sexual abuse because this crime relies on the use of ICTs, which enable child sex offenders to identify, target and sexually abuse vulnerable children worldwide.



90. "Convention on Cybercrime," *Council of Europe*: <https://www.coe.int/en/web/cybercrime/the-budapest-convention>.

91. "Chart of signatures and ratifications of Treaty 185," *Council of Europe*: <https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treaty=185>.

92. "Convention on Cybercrime," *Council of Europe*, Article 9 – Offences related to child pornography: <https://www.coe.int/en/web/cybercrime/the-budapest-convention>.

# NATIONAL LEGISLATION

While the Directive 2011/93/EU can provide the basis for the creation of new national legislation to combat sex-based crimes against children and address various forms of child sexual abuse and exploitation, Member States have transposed only partially the provisions of the Directive. In this regard, the European Parliament:



*Deplores the fact that the Member States have faced significant challenges in transposing and implementing the Directive, in*

*particular as regards the provisions on prevention, investigation and prosecution as well as protection and assistance to victims and that the full potential of the Directive has not yet been exploited; urges the Member States to step up their efforts to transpose it fully and correctly; calls on the Member States to ensure that legal transposition is translated into effective implementation so as to ensure the protection and assistance of child victims and zero tolerance for child sexual abuse.<sup>93</sup>*

As regards live online child sexual abuse, the European Parliament expressed concerns about the increase of this phenomenon and highlighted the child sex offenders' technical ability to use ICTs in order to commit sex-based crimes against children. The European Parliament also stressed the importance of developing technology that would prevent the supply of live online child sexual abuse<sup>94</sup>, however, the European Parliament's recommendation does not consider the substantive criminal law aspects of this phenomenon. While it is

important to identify and block access to live online child sexual abuse, it is also important to tackle the issues central to this phenomenon such as the identification and prosecution of the perpetrators, traffickers and facilitators of this crime as well as the protection of child victims who are sexually abused and exploited.

The legislation at the national level fails to specifically address the criminalization of live online child sexual abuse as a unique form of sexual exploitation and abuse of children. There is an apparent lack of a definition with respect to live online child sexual abuse both on international and national levels, which precludes the creation of provisions in legislation and consequently the criminalization of this relatively new phenomenon which is now well established. The lack of provisions in existing legislation and explicit criminalization of live online child sexual abuse may also result in a lack of awareness among the public, law enforcement practitioners and other key stakeholders. In this regard, this crime may not be recognized as a serious form of sexual exploitation and abuse of children on its own and may therefore remain out of sight. Nevertheless, law enforcement practitioners may still prosecute, convict and sentence child sex offenders involved in live online child sexual abuse on the basis of existing provisions pertaining to sexual offences against children. However, these provisions only address specific aspects of live online child sexual abuse such as rape, sexual

<sup>93</sup>. "European Parliament resolution of 14 December 2017 on the implementation of Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography," *Official Journal of the European Union*, Main conclusions and recommendations 2: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52017IP0501>.

<sup>94</sup>. *Ibid.*, Substantive Criminal Law (Articles 3, 4 and 5 of the Directive).

assault, CSAM or the solicitation and trafficking of children for sexual purposes. Additionally, the existing provisions related to sexual offences and child sexual exploitation and abuse cater more to traditional sexual offences involving physical acts, travel or child sexual abuse material in the form of images. As a result, law enforcement practitioners like judges have to rely on the existing legislation at hand, which fails to encompass the phenomenon as a whole and all the steps that the crime involves: e.g., soliciting children or adult individuals in order to sexually abuse children, searching and targeting vulnerable children and individuals online, using ICTs to communicate, negotiate, requesting, directing or transmitting the sexual abuse of children in real time and making payments for the sexual abuse of children. As WeProtect highlighted, "this creates a barrier to global law enforcement collaboration, and restricts the ability to develop consistent investigative approaches."<sup>95</sup> In this regard, it is important to enact specific legislation to criminalize live online child sexual abuse, because charging and convicting child sex offenders on the basis of CSAM-related legislation may result in inappropriate sentences and mere fines which fail to picture the severity of the sexual offences. The current legislation and the existing provisions fail to address the cruelty of the sexual abuse committed against child victims as well as the real-time active participation of the perpetrator by requesting, ordering and instructing the type of sexual acts to be carried out by and/or against children. The fact that live online child sexual abuse tends to be a cross-border phenomenon also requires the harmonization of national legislations to avoid disparities which may negatively impact the protection of children from sexual exploitation and abuse.

The implementation of legislation which directly criminalizes and recognizes live online child sexual abuse as a unique criminal offence that makes it possible to prosecute child sex offenders involved in this crime is crucial in order to tackle this phenomenon as well as to create a safer online environment for children. In this regard, live online child sexual abuse should be considered as a separate criminal offence in its own right containing elements within the group of cybercrime offences and child sexual exploitation and abuse offences. Furthermore, legislation at the national level should be updated possibly within a reasonable short

period of time due to the rapid growth of this crime in scale and the ease of perpetrators to sexually exploit and abuse children online in real time and relative secrecy from the comfort of their home. The implementation of legislation which directly criminalizes and recognizes live online child sexual abuse as a unique criminal offence may also have a deterrent effect on both the supply and demand of this crime by ensuring punishment to perpetrators who may seek to sexually abuse and exploit children. In this regard, criminological research has demonstrated that the certainty of punishment has a stronger deterrent effect for perpetrators who may seek to engage in such criminal activity.<sup>96</sup> The absence of legislation directly criminalizing live online child sexual abuse may lead towards different sentencing and prosecution outcomes for one particular criminal offence. It is worth highlighting that the perpetrators involved in live online child sexual abuse exhibit low technical sophistications and the crime occurs primarily on the open web, which may be attributed to the fact that they perceive the chances of being detected and convicted as low. The absence of legislation directly criminalizing live online child sexual abuse may give perpetrators the confidence to continue offending because of the possibility that such crime is not taken as seriously as other sexual offences. As a result, comprehensive national legislation aligning with international standards and taking into account technological advancements is a prerequisite for enabling law enforcement practitioners to investigate and prosecute perpetrators, and ultimately protect children. In this regard, existing international legal frameworks may serve as the basis for the creation of national legislation specifically criminalizing live online child sexual abuse, however, there is no internationally agreed definition of this criminal offence yet.

<sup>95</sup>. "Global Threat Assessment 2021," *WeProtect Global Alliance*, p. 63.

<sup>96</sup>. Valerie Wright, "Deterrence in Criminal Justice: Evaluating Certainty vs. Severity of Punishment," *The Sentencing Project*, November 19, 2010: <https://www.sentencingproject.org/publications/deterrence-in-criminal-justice-evaluating-certainty-vs-severity-of-punishment/#:~:text=An%20analysis%20of%20the%20deterrent,additional%20effect%20on%20detering%20crime>.

## Child Sexual Abuse

### Material Offences

#### BELGIUM

The Belgian Penal Code criminalizes both the supply and demand of CSAM under Art. 383bis, which states that “anyone who displays, sells, rents, distributes or delivers emblems, objects, films, photos, slides or other visual formats representing sexual positions or acts of a pornographic nature involving or showing minors, or who manufactures, possesses, imports or arranges for import, or delivers to a transport or distribution agent for commercial or distribution purposes is liable upon conviction to imprisonment for a term of five to ten years and a fine of 500 to 10,000 Euros.”<sup>97</sup>

In addition, according to paragraph 2 of Art. 383bis, “anyone knowingly in possession of any emblems, objects, films, photos, slides or other visual formats referred to in §1, or who in full knowledge of all the considerations involved, accesses them using a computer system or any other technological means is liable upon conviction to imprisonment for a term of one month to one year and a fine of 100 Euros to 1,000 Euros.”<sup>98</sup> In this regard, it is possible to prosecute and convict perpetrators involved in live online child sexual abuse, who engage in the crime without capturing CSAM being transmitted in real time online. It is worth highlighting that it also enables law enforcement practitioners to sentence perpetrators who attempted to engage in live online child sexual abuse by arranging sexual abuse sessions with facilitators or traffickers, and/or conducting payments for the sexual abuse to take place even though it does not occur. In this regard, this material evidence could be considered sufficient to prove the perpetrators’ intent to engage in live online child sexual abuse. Nevertheless, it is worth pointing out that the criminal offences outlined in Art. 383bis of the Belgian Penal Code are extremely low for child sex offenders on the demand side of the crime.

#### SWEDEN

The Swedish Criminal Code only enables law enforcement practitioners to prosecute and convict perpetrators who engage in live online child sexual abuse without capturing CSAM being transmitted in real time online. According to Chapter 16, Section 10a of the Criminal Code, CSAM is criminalized if an individual: “(1) depicts a child in a pornographic image; (2) disseminates, transfers, grants use of, exhibits or otherwise makes such an image of a child available to another person; (3) acquires or offers such an image of a child; (4) mediates contacts between a buyer and a seller of such images of children or takes some other similar measure intended to facilitate dealing in such images; or (5) possesses such an image of a child or views such an image that they have obtained access to.”<sup>99</sup> The individual is punished by at most two years of imprisonment if proven guilty under this provision. If an offence referred to in the first paragraph is considered minor, the sentence is a fine or imprisonment for at most six months.

If an offence referred to in the first paragraph is considered gross, “particular consideration is given to whether the offence was committed in the course of business activities or for profit, was part of criminal activities conducted systematically or on a large scale, concerned a particularly large number of images or concerned images in which the children are particularly young, are subjected to violence or coercion, or are exploited in some other particularly ruthless way.”<sup>100</sup> In this regard, the perpetrator is sentenced to imprisonment for at least one year and at most six years.

However, this provision is limited to images while CSAM may take various forms including videos or sound files. As a result, this provision may not apply to perpetrators involved in live online child sexual abuse in case they do not capture CSAM as well as if the captured material is not in the form of images.

97. “Code pénal,” Chapitre VII. - des outrages publics aux bonnes mœurs, *Legislationline*, Art. 383bis : [https://www.legislationline.org/download/id/9628/file/BELG\\_CC\\_fr.pdf](https://www.legislationline.org/download/id/9628/file/BELG_CC_fr.pdf).

98. *Idem*.

99. “The Swedish Criminal Code,” Chapter 16 – On offences against public order, Section 10a: <https://www.government.se/4b0103/contentassets/7a2dcae0787e465e9a2431554b5eab03/the-swedish-criminal-code.pdf>.

100. *Idem*.

## FRANCE

According to Article 227-23 of the French Penal Code, the act of producing CSAM in the form of images or depictions in order to distribute it is punished by five years of imprisonment and a fine of 75,000 euros, and when the child depicted on such CSAM is below the age 15 years the same punishment applies even though there is no intent to distribute it. When such material is distributed to the public via ICTs, the punishment amounts to seven years of imprisonment and a fine of 100,000 euros. The act of accessing CSAM on a regular basis or in exchange of a payment to a service provider hosting such material or acquiring or possessing such material by any means is punished by five years imprisonment and a fine of 75,000 euros. When the aforementioned offences are committed as part of an organized crime group. It is worth highlighting that the attempt to commit the aforementioned offences is punished by the same sentences and fines.<sup>101</sup>

Similar to the Swedish Criminal Code, this provision is limited to images, however it includes the term depiction which may contain other forms of CSAM such as videos. Nevertheless, such terminology is overly broad and lacks clarity, especially for law enforcement practitioners, as to what forms of CSAM falls under this term. In addition, while the act of accessing CSAM without possessing enables law enforcement practitioners to prosecute and convict perpetrators involved in live online child sexual abuse, it appears to be only possible on the condition that they do so on a regular basis. However, this term may be subject to subjective interpretation as to what may be considered a regular basis. Additionally, a single offence in the context of live online child sexual may result in significant or life-long trauma for child victims.

As regards CSAM captured in the context of live online child sexual abuse, perpetrators can be sentenced under Article 222-33-3 of the French Penal Code. This provision criminalizes acts of complicity consisting of knowingly capturing, by any means and on any format, images of the commission pertaining to the acts carried out (i.e., complicity of sexual assault, complicity of rape, complicity of torture and acts of barbarity). In case the material is distributed the perpetrator can be punished by five years of imprisonment and a fine of 75,000 euros.<sup>102</sup>

## THE NETHERLANDS

The Dutch Criminal Code criminalizes both the supply and demand of CSAM under Section 240b, which states that:



*(1) Any person who distributes, offers, publicly displays, produces, imports, conveys in transit, exports, obtains, possesses or accesses by means of a computerised device or system or by use of a communication service an image - or a data carrier that contains an image - of a sexual act involving or seemingly involving a person who is manifestly under the age of eighteen years, shall be liable to a term of imprisonment not exceeding four years or a fine of the fifth category.*

*(2) Any person who makes a profession or habit of committing any of the serious offences defined in subsection (1), shall be liable to a term of imprisonment not exceeding eight years or a fine of the fifth category.”<sup>103</sup>*

A fine of the fifth category corresponds to €78,000 as of January 1, 2012.<sup>104</sup>

Section 240b enables law enforcement practitioners to prosecute and convict perpetrators involved in live online child sexual abuse, who engage in the crime without capturing CSAM being transmitted in real time online. Following the ratification of the

**101.** "Section 5 : De la mise en péril des mineurs (Articles 227-15 à 227-28-3)," *Légifrance*, Article 227-23: [https://www.legifrance.gouv.fr/codes/article\\_lc/LEGIARTI000043409170](https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000043409170).

**102.** "Section 3 ter : De l'enregistrement et de la diffusion d'images de violence (Article 222-33-3)," *Légifrance*, Article 222-33-3: [https://www.legifrance.gouv.fr/codes/section\\_lc/LEGITEXT000006070719/LEGISCTA000006165283/#LEGISCTA000006165283](https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000006070719/LEGISCTA000006165283/#LEGISCTA000006165283).

**103.** "Criminal Code of the Kingdom of Netherlands (1881, amended 2012)," Part XIV. Serious Offences against Public Morals, Section 240b, *Legislationline.org*: [https://www.legislationline.org/download/id/6415/file/Netherlands\\_CC\\_am2012\\_en.pdf](https://www.legislationline.org/download/id/6415/file/Netherlands_CC_am2012_en.pdf).

**104.** "Criminal Code of the Kingdom of Netherlands (1881, amended 2012)," Part I. Scope of Application of Criminal Law, Section 23, *Legislationline.org*: [https://www.legislationline.org/download/id/6415/file/Netherlands\\_CC\\_am2012\\_en.pdf](https://www.legislationline.org/download/id/6415/file/Netherlands_CC_am2012_en.pdf).

Lanzarote Convention, Section 240b of the Dutch Criminal Code was amended to criminalize "access" to CSAM via ICTs, which also includes access to live online child sexual abuse.<sup>105</sup> Before the ratification, the requirement of "possession" would not give law enforcement practitioners this level of legislative reach. The possession of CSAM is therefore not required anymore, which enables law enforcement practitioners to prosecute and convict perpetrators involved in live online child sexual abuse without capturing CSAM. It is worth pointing out that "the material that constitutes a criminal offence by virtue of the text of Dutch law is limited to visual material, specifically an 'image' or a 'data storage medium containing an image'. Audio, or sound clips, are not in themselves subject to criminal provisions."<sup>106</sup> As a result, CSAM resulting from live online child sexual abuse in the form of an audio file would not constitute a criminal offence by virtue of this provision.

## ROMANIA

According to ECPAT, "information pertaining to the occurrence of child pornography within Romania is largely lacking."<sup>107</sup> The reason for this lack of information can be attributed to the fact that the mere possession of CSAM in Romania is not considered as a criminal offence.

The Romanian Criminal Code states that:



(1) *The act of displaying, selling or disseminating, renting, distributing, manufacturing or producing in any other manner,*

*transmitting, offering or making available or of possessing in order to disseminate child pornography material, without right, shall be punished by strict imprisonment from 3 to 12 years and the prohibition of certain rights.*

(2) *The same penalty shall also sanction import, export or handing over material of the kind in para. (1) to a transport or distribution agent, for sale or distribution.*<sup>108</sup>

*The act of producing in order to disseminate, offer or make available, disseminate or transmit, obtain for oneself or for another, child pornography material through computer systems, or the possession, without right, of child pornography material in a computer*

*system or data storage medium shall be punished by strict imprisonment from 3 to 12 years and the prohibition of certain rights.*<sup>109</sup>

These provisions may tackle the supply of live online child sexual abuse, however, they do not criminalize the demand side of the crime. According to Article 237 of the Romanian Criminal Code, only the possession of CSAM with the intent to distribute it is criminalized. However, child sex offenders involved in live online child sexual abuse may engage in such criminal activity without capturing CSAM to avoid being in possession of digital evidence. Moreover, even if perpetrators would capture CSAM resulting from live online child sexual abuse, they could not be prosecuted under this provision if they do not intend to distribute it. In addition, the term "without right" refers to an individual who is a) not authorized, on grounds of the law or a contract, b) exceeding limits of authorization; c) not having permission, from the natural or legal person qualified, according to the law to grant it, to use, manage or control a computer system or to conduct scientific research or to conduct any other operation in a computer system.<sup>110</sup> In addition to possessing with the intent to distribute CSAM, perpetrators should also meet one or more of the aforementioned requirements. As a result, CSAM-related provisions as per the Romanian Criminal Code are not applicable to live online child sexual abuse and may prevent law enforcement practitioners from prosecuting child sex offenders involved in this crime.

<sup>105</sup>. "Child Pornography, First report of the Dutch National Rapporteur," *National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children*: <https://www.dutchrapporteur.nl/publications/reports/2012/06/06/first-report-on-child-pornography>, p. 56.

<sup>106</sup>. "Child Pornography, First report of the Dutch National Rapporteur," *National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children*: <https://www.dutchrapporteur.nl/publications/reports/2012/06/06/first-report-on-child-pornography>, p. 59.

<sup>107</sup>. "Global Monitoring Status of Action Against Commercial Sexual Exploitation of Children, Romania," *ECPAT International*, 2012: <https://ecpat.org/resource/romania-country-monitoring-report/>.

<sup>108</sup>. "Criminal Code," *ICC Legal Tools Database*, Child pornography Art. 237: <https://www.legal-tools.org/doc/e4f6c9/pdf/>.

<sup>109</sup>. "Criminal Code," *ICC Legal Tools Database*, Child pornography through computer systems Art. 238: <https://www.legal-tools.org/doc/e4f6c9/pdf/>.

<sup>110</sup>. "Criminal Code," *ICC Legal Tools Database*, Meaning of certain terms or phrases Art. 449: <https://www.legal-tools.org/doc/e4f6c9/pdf/>.

# Punishing Perpetrators under Contact Sexual Offences: Case Studies

Child sex offenders involved in live online child sexual abuse are not receiving sentences that accurately reflect the gravity of their crimes. The sentences based on existing CSAM legislation are inadequate to punish, disrupt, and restrain these perpetrators, let alone to bring justice to child victims. Considering the numerous serious counts of sexual abuse, the repeated and premeditated offences and the severe harm caused to child victims of live online child sexual abuse, it is necessary that perpetrators receive sentences that accurately reflect the gravity of their crimes. As the IJM points out, “an offender serving a prison period less than the time he abused children sends a message that his offending was not serious; that the abuse inflicted on the victim is not serious. And that message is simply untrue.”<sup>111</sup> For example, former British Army officer Andrew Whiddett was sentenced to approximately three years of imprisonment for live online child sexual abuse while he had been committing sex-based crimes against children for several years. Although some mitigating factors were taken into account, the sentence was still lower than the actual time he had been offending.<sup>112</sup> By contrast, the trafficker who sexually exploited child victims was sentenced for life.<sup>113</sup> In the absence of legislation directly criminalizing live online child sexual abuse, it appears more adequate to sentence perpetrators on the basis of the existing contact sexual offences (e.g., rape, sexual assault). While these provisions only address specific aspects of live online child sexual abuse and cater more to traditional sexual offences, the resulting sentences accurately reflect the gravity of the sexual abuse caused to child victims.

## BELGIUM

In 2018, a 25-year-old child sex offender was convicted for rape in a case of live online child sexual abuse resulting from the solicitation of children for sexual purposes. The perpetrator created fake profiles on social media and text messaging applications in order to sexually engage

with teenage girls. During a period of five years, he coerced and sexually extorted child victims into carrying out sexual acts online including non-consensual self-penetrative acts. This case of live online child sexual abuse is the first one that resulted in the perpetrator being convicted under the rape provision of the Belgian Penal Code, in spite of the fact that there was no physical contact between the perpetrator and the child victims.<sup>114</sup> The use of the rape provision under the Belgian Penal Code may be considered as a milestone because the sentence more appropriately reflects the seriousness of the crime than CSAM-related provisions, which would have resulted between one month and a year of imprisonment; or the provision pertaining to the solicitation of children for sexual purposes (see below Art. 433bis/1), which would have resulted in three months to maximum five years of imprisonment.

The rape provision under the Belgian Penal Code enables law enforcement practitioners to broadly interpret the law and sentence more appropriately perpetrators of sex-based crimes against children in the context of live online child sexual abuse. According to Article 375 of the Belgian Penal Code, rape is defined as “Any act of sexual penetration, regardless of its nature and by whatever means, committed against a non-consenting person.” In order for a sex-based crime to be considered as rape under the Belgian law, two requirements must be satisfied: the existence of sexual penetration and the lack of sexual consent of the victim. The provision does not require the existence of physical acts, which means that physical contact is not a constitutive element of the rape provision allowing law practitioners to criminalize live online child sexual

<sup>111</sup>. “Falling Short,” *International Justice Mission*, p. 32.

<sup>112</sup>. “Former Army officer jailed for live-streaming child sex abuse from Philippines,” *Metro*, May 23, 2019: <https://metro.co.uk/2019/05/23/former-army-officer-jailed-live-streaming-child-sex-abuse-philippines-9656202/>.

<sup>113</sup>. “Online trafficker sentenced to life imprisonment in Butuan City,” *SunStar*, January 29, 2020: <https://www.sunstar.com.ph/article/1841985>.

<sup>114</sup>. “Five years in jail for “rape at a distance” for online abuser,” *The Brussels Times*, September 26, 2018: <https://www.brusselstimes.com/justice-belgium/50940/five-years-in-jail-for-rape-at-a-distance-for-online-abuser> and “Condamné pour viol ... commis via Internet,” *Droit & Technologies*, September 25, 2018: <https://www.droit-technologie.org/actualites/condamne-viol-via-internet/>.

abuse offences under the rape provision. When the child victim has not reached 14 years of age, lack of consent is not a constituent element anymore and amounts to the act to violent/forced rape. As regards punishments for rape offences, the Belgian Penal Code establishes a mandatory minimum punishment of five to ten years imprisonment; ten to 15 years imprisonment for acts committed against a child victim above 16 years of age; 15 to 20 years imprisonment for acts committed against a child victim between 14 and 16 years of age as well as for any acts committed against children below the age of 14 years of age, which is considered as violent/forced rape; and 20 to 30 years imprisonment for acts committed against a child victim below the age of ten years of age.<sup>115</sup>

## SWEDEN

In 2017, a 41-year-old child sex offender was convicted for rape in a case of live online child sexual abuse resulting from the solicitation of children for sexual purposes. The perpetrator sexually abused a total of 27 child victims mostly under the age of 15 years from Canada, the United Kingdom and the United States. The perpetrator committed serious harm to child victims by coercing them into carrying out live sexual acts which he would capture and sexually extorted them by threatening to publicly post the captured material as well as by making death threats over the child victims' relatives. The perpetrator also forced a child victim into sexually engaging with another child, as well as another child victim to carry out sexual acts with a stranger and animals. The serious harm and the sexual acts were deemed so severe that the child sex offender was convicted under the rape provision of the Swedish Criminal Code even though there was no physical contact between the perpetrator and the child victims.<sup>116</sup> The perpetrator was sentenced to 10 years imprisonment, which "sends a clear signal that sexual acts performed under threats of violence issued online can be every bit as serious and traumatic as physical attacks," the prosecutor pointed out.<sup>117</sup>

It is worth noting that the worst forms of rape are punished by low sentences as per the Swedish Criminal Code. For example, the rape of a child is punished by imprisonment for at least two and at most six years (Chapter 6, Section 4 of the Criminal Code). In the same regard, aggravated rape

which is referred to as "gross" rape is punished by imprisonment for at least five and at most ten years (Chapter 6, Section 1 of the Criminal Code):



*If an offence [...] is considered gross, the person is guilty of gross rape and is sentenced to imprisonment for at least five and at most ten years. When assessing whether the offence is gross, particular consideration is given to whether the perpetrator used violence or a threat of a particularly serious nature, or whether more than one person assaulted the victim or took part in the assault in some other way, or whether, in view of the method used or the young age of the victim or otherwise, the perpetrator exhibited particular ruthlessness or brutality.<sup>118</sup>*

Similar to the Belgian case, the use of the rape provision under the Swedish Criminal Code may be considered as a milestone because this case of live online child sexual abuse is the first one that resulted in the perpetrator being convicted under the rape provision of the Swedish Criminal Code, while such offences are known for usually being criminalized under sexual assault or CSAM-related provisions, resulting in mere fines and sentences compared to the actual harm caused to

**115.** "Code pénal," Chapitre V. [du voyeurisme, de la diffusion non consensuelle d'images et d'enregistrements à caractère sexuel, de l'attentat à la pudeur et du viol], *Legislationline*, Art. 375 : [https://www.legislationline.org/download/id/9628/file/BELG\\_CC\\_fr.pdf](https://www.legislationline.org/download/id/9628/file/BELG_CC_fr.pdf).

**116.** "Swede accused of sexually abusing children online in US, UK and Canada," *The Local.se*, September 28, 2017: <https://www.thelocal.se/20170928/swede-accused-of-sexually-abusing-children-online-in-us-uk-and-canada/> and "Swede convicted of online rape of children from US, Canada and Scotland," *The Local.se*, December 1, 2017: <https://www.thelocal.se/20171201/swede-convicted-of-online-rape-of-children-from-us-canada-and-scotland/>.

**117.** "Swedish man found guilty of 'online' rape has convictions upgraded," *Global News*, April 18, 2018: <https://globalnews.ca/news/4153203/swedish-man-guilty-online-rape-convictions-upgraded/>.

**118.** "The Swedish Criminal Code," *Government Offices of Sweden*, Chapter 6, Section 1: <https://www.government.se/government-policy/judicial-system/the-swedish-criminal-code/>.

children and the multiplicity of offences due to the online nature of this crime. Additionally, rape of a child is defined as “a person who performs sexual intercourse, or another sexual act that in view of the seriousness of the violation is comparable to sexual intercourse, with a child under fifteen years of age is guilty of rape of a child” as per the Swedish Criminal Code.<sup>119</sup> As a result, the provision does not require the existence of physical acts, which means that physical contact is not a constitutive element of the rape provision allowing law practitioners to criminalize live online child sexual abuse offences under the rape provision. This case also highlighted that there is no distinction between online and offline sexual abuse. The harm caused to child victims is real regardless of whether it occurs online or offline. Nevertheless, although the perpetrator was convicted of rape, the sentence does not appropriately reflect the seriousness of the crime, especially since some sexual acts involved bestiality and multiple children. The perpetrator also made death threats to the child victims, and the combination of such severe acts may have life-long consequences on child victims.

In the same regard, it is worth highlighting another case of live online child sexual abuse which resulted in the perpetrator being convicted under the rape provision of the Swedish Criminal Code. In 2013, a 52-year-old Swedish man was convicted of eight years of imprisonment for engaging in live online child sexual abuse with 18 Filipino minors.<sup>120</sup>

## FRANCE

The prosecution of child sex offenders under rape provisions in the context of live online child sexual abuse may constitute a challenge in some countries, where the legislation may prevent law enforcement practitioners from appropriately sentencing perpetrators involved in this crime. For example, in France, the Penal Code states that “Any act of sexual penetration, of whatever nature, committed on the person of another by violence, constraint, threat or surprise is a rape.”<sup>121</sup> On the basis of this definition, it is required that a child sex offender commits sexual acts involving sexual penetration against a child victim in order to qualify the crime as rape. In this regard, it requires the physical contact between the perpetrator and child victim. The definition of rape within the French

Penal Code is primarily focused on the act itself, whereas the definition of rape within the Belgian Penal Code is more focused on the absence of consent from the victim of the crime. Furthermore, the French Penal Code requires the acts to be carried out specifically as a result of “constraint, threat or surprise”, which may limit the ability of law enforcement practitioners to prosecute child sex offenders involved in live online child sexual abuse under the rape provision. This is particularly the case in the context of the solicitation of children for sexual purposes (i.e., grooming) when child victims produce SGSC, and no apparent signs of constraint and threat is identified. By contrast, the Belgian Penal Code does not specify how the acts should be carried out (i.e., “by whatever means”), which enables law enforcement practitioners to prosecute child sex offenders even though they committed acts of sexual abuse online through ICTs. As a result, the prosecution of child sex offenders involved in live online child sexual abuse may be challenging due to the lack of provisions that could be used in order to appropriately sentence perpetrators. On the basis of article 222-23 of the French Penal Code, physical contact and sexual acts involving penetration by another individual under “constraint, threat or surprise” are constitutive elements of the rape offence. However, live online child sexual abuse is conducted online through ICTs and the acts are not carried out directly by the perpetrator (although they may order or request them), and they do not necessarily involve elements of “constraint, threat or surprise”.

The Law 2021-478 of April 21, 2021 implemented new provisions to protect minors against sexual abuse offences.<sup>122</sup> The Law stated that any act of sexual penetration perpetrated by an adult

<sup>119</sup>. Ibid., Chapter 6, Section 4.

<sup>120</sup>. “Swede jailed for ‘long-distance’ child rape,” *The Local se*, January 10, 2013: <https://www.thelocal.se/20130110/45526/>.

<sup>121</sup>. “Section 3 : Du viol, de l’inceste et des autres agressions sexuelles (Articles 222-22 à 222-33-1),” *Légifrance*, Article 222-23: [https://www.legifrance.gouv.fr/codes/section\\_lc/LEGITEXT000006070719/LEGISCTA000006165281/#LEGISCTA000043409037](https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000006070719/LEGISCTA000006165281/#LEGISCTA000043409037).

<sup>122</sup>. “LOI n° 2021-478 du 21 avril 2021 visant à protéger les mineurs des crimes et délits sexuels et de l’inceste (1),” *Légifrance*: <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000043403203>.

on a minor under 15 years of age (or by a minor on an adult) constitutes rape (Article 222-23-1 of the French Criminal Code) and is punished by imprisonment up to 20 years. There is an exception set out in this article: it is only applicable in case the age difference between the adult and the minor is at least 5 years. The age difference is irrelevant if the act was perpetrated in exchange for a financial compensation, the promise of a financial compensation, the provision of any advantage in nature or the promise of such advantage. These provisions create a regime of statutory rape and sexual assaults on minors under 15 years of age, where the sexual consent of the child is irrelevant.<sup>123</sup>

It is possible to rely on the provision pertaining to sexual assault under Article 222-22-2 to overcome some of these challenges such as the requirement of physical contact and acts of sexual penetration to be carried out by the perpetrator against the child victim. The Article 222-22-2 of the French Penal Code criminalizes sexual assault by causing someone to be subject to sexual assault by a third tier or to carry out sexual assault on themselves by means of "violence, constraint, threat or surprise."<sup>124</sup> This provision could enable law enforcement practitioners to prosecute child sex offenders who have sexually abused child victims by requesting and/or ordering a facilitator to carry out the acts of sexual abuse, or the child victims themselves. However, the use of "violence, constraint, threat or surprise" are also constitutive elements of the sexual assault offence defined as per Article 222-22-2 and should be proven in order for the acts to qualify for sexual assault. Sexual assault committed against a vulnerable person due to their age, social or economic disparity is punished by seven years imprisonment and a 100,000 euros fine based on Article 222-29.<sup>125</sup> In the same regard, sexual assault committed against a child under the age of 15 years by means of "violence, constraint, threat or surprise" is punished by ten years imprisonment and a 150,000 euros fine based on 222-29-1.<sup>126</sup> As a result, the combination of Article 222-22-2 and Article 222-29/222-29-1 may result in more appropriate sentences for child sex offenders involved in live online child sexual abuse, which may involve the solicitation of children for sexual purposes (i.e., grooming) or perpetrators targeting foreign child victims living in countries showing social or economic disparity (e.g., Philippines), where third parties (e.g., traffickers/facilitators) may

sexually exploit and abuse child victims based on the perpetrators' requests/orders.

The Law 2021-478 of April 21, 2021 implemented a new provision regarding sexual abuse other than rape. The law stated that any act of sexual touching perpetrated by an adult on a minor under 15 years constitutes sexual assault other than rape (Article 222-29-2).<sup>127</sup> This offence is punished by imprisonment up to 10 years and a fine up to 150 000 euros. The same age difference regime stated hereabove applies to this offence. In addition, according to Article 227-25, any act of sexual touching on a minor under 15 performed by an adult is punished by imprisonment up to 7 years and a fine up to 100 000 euros. This provision also creates a regime of statutory rape and sexual assaults on minors under 15 years of age, where the sexual consent of the child is irrelevant.<sup>128</sup>

Nevertheless, the sentence and fine under sexual assault provisions may not reflect the actual harm caused to child victims, which may be similar to rape or even worse as per the Swedish case study hereabove. The fact that the crime takes place

**123.** "Section 3 : Du viol, de l'inceste et des autres agressions sexuelles (Articles 222-22 à 222-33-1)," *Légifrance*, Article 222-23-1: [https://www.legifrance.gouv.fr/codes/article\\_lc/LEGIARTI000043409025](https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000043409025).

**124.** "Section 3 : Du viol, de l'inceste et des autres agressions sexuelles (Articles 222-22 à 222-33-1)," *Légifrance*, Article 222-22-2: [https://www.legifrance.gouv.fr/codes/section\\_lc/LEGITEXT000006070719/LEGISCTA000006165281/#LEGISCTA000043409037](https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000006070719/LEGISCTA000006165281/#LEGISCTA000043409037).

**125.** "Section 3 : Du viol, de l'inceste et des autres agressions sexuelles (Articles 222-22 à 222-33-1)," *Légifrance*, Article 222-23-3 and 222-29: [https://www.legifrance.gouv.fr/codes/section\\_lc/LEGITEXT000006070719/LEGISCTA000006165281/#LEGISCTA000043409037](https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000006070719/LEGISCTA000006165281/#LEGISCTA000043409037).

**126.** "Section 3 : Du viol, de l'inceste et des autres agressions sexuelles (Articles 222-22 à 222-33-1)," *Légifrance*, Article 222-29-1: [https://www.legifrance.gouv.fr/codes/article\\_lc/LEGIARTI000043409025](https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000043409025).

**127.** Sexual touching refers to any physical contact of a sexual nature, see for example: "Cour de cassation, criminelle, Chambre criminelle, 7 septembre 2016, 15-83,287, Publié au bulletin," *Légifrance*: <https://www.legifrance.gouv.fr/juri/id/JURITEXT000033108421/>; "Section 3 : Du viol, de l'inceste et des autres agressions sexuelles (Articles 222-22 à 222-33-1)," *Légifrance*, Article 222-29-2: [https://www.legifrance.gouv.fr/codes/article\\_lc/LEGIARTI000043409025](https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000043409025).

**128.** "Section 5 : De la mise en péril des mineurs (Articles 227-15 à 227-28-3)," *Légifrance*, Article 227-25: [https://www.legifrance.gouv.fr/codes/article\\_lc/LEGIARTI000043409025](https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000043409025).

online may desensitize perpetrators and push them to commit acts which they would/could not carry out physically and with impunity given that these acts are committed distantly. In this regard, the provisions and sentences outlined in the Belgian Penal Code appear to be the most appropriate as they enable law enforcement practitioners to sentence child sex offenders involved in live online child sexual abuse under rape provisions. Furthermore, the sentences outlined in the Belgian Penal Code may accurately reflect the harm caused to child victims in contrast to the Swedish Criminal Code and the French Penal Code. In the Swedish case or in the case of Regina V Michael Anthony Charnley mentioned previously, the sentencing of the perpetrator under the rape provision as per the Belgian Penal Code would have resulted in 15 to 20 years imprisonment for acts committed against a child victim between 14 and 16 years of age as well as for any acts committed against children below the age of 14 years of age, which is considered as violent/forced rape in the Swedish case; and 20 to 30 years imprisonment for acts committed against a child victim below the age of ten years of age in the case of Regina V Michael Anthony Charnley. In France, rape is punished by 20 years imprisonment when the acts are committed against a child victim under the age of 15 years, however, as highlighted hereabove, this provision may not be applicable for cases of live online child sexual abuse.

In the context of live online child sexual abuse resulting from the trafficking of children for sexual purposes, perpetrators make payments in order to sexually abuse children. As a result, what appears to be the most appropriate provision is under Article 222-30-2, which states that making offers or promises, or proposing gifts or any other advantage to a person (including monetary offers) to any person in order for the person to commit rape or (Article 222-26-1) acts of sexual abuse (Article 222-30-2), including outside the national territory, is punished even if the acts had not been carried out or attempted by five years of imprisonment and a fine of 75 000 euros. When the acts should have been carried out against children, the perpetrator can be punished by seven years of imprisonment and a fine of 100,000 euros (sexual abuse) or 10 years of imprisonment and a fine of 150,000 euros.<sup>129</sup> This provision is particularly relevant for perpetrators who request acts of sexual abuse, even if these acts are not carried out, in the context of live online child sexual abuse resulting

from the trafficking of children for sexual purposes (e.g., Philippines). Furthermore, law enforcement practitioners may choose the applicable provision based on the acts requested by the perpetrator (e.g., sexually suggestive activity, simulated sexual acts, penetrative acts, etc.). In the same regard, it is worth mentioning Article 121-7, which defines the notion of complicity: is an accomplice to a crime or an offence the person who knowingly, by aid or assistance, facilitated its preparation or consumption. Additionally, the person who, by gift, promise, threat, order, abuse of authority or power, provoked an offence or gave instructions to commit it is also an accomplice.<sup>130</sup>

The first conviction of a child sex offender involved in live online child sexual abuse in France is the case of the French aircraft pilot mentioned earlier. He allegedly engaged in live online child sexual abuse for a period of four years with multiple child victims as young as two years of age. He also possessed approximately 15,000 CSAM and was active on online communities dedicated to CSAM. In spite of these serious criminal offences and the severe harm caused to multiple child victims, the perpetrator was punished by five years of imprisonment for complicity of sexual assault and for CSAM possession.<sup>131</sup> As per the French Penal Code, sexual assault acts other than rape is punished by five years of imprisonment and a fine of 75,000 euros.<sup>132</sup> The CSAM provision of the French Penal Code establishes punishment of five years imprisonment.<sup>133</sup>

**129.** "Section 3 : Du viol, de l'inceste et des autres agressions sexuelles (Articles 222-22 à 222-33-1)," *Légifrance*, Article 222-26-1 and 222-30-2: [https://www.legifrance.gouv.fr/codes/section\\_lc/LEGITEXT000006070719/LEGISCTA000006181754/?anchor=LEGLA-RTI000042182586#LEGIARTI000042182586](https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000006070719/LEGISCTA000006181754/?anchor=LEGLA-RTI000042182586#LEGIARTI000042182586).

**130.** "Titre II : De la responsabilité pénale (Articles 121-1 à 122-9)," *Légifrance*, Article 121-7: [https://www.legifrance.gouv.fr/codes/section\\_lc/LEGITEXT000006070719/LEGISCTA000006149817/#LEGISCTA000006149817](https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000006070719/LEGISCTA000006149817/#LEGISCTA000006149817).

**131.** "Pédocriminalité : 'Je ne peux pas porter toute la misère du monde des vidéos que j'ai visionnées,'" *France Inter*, January 14, 2020: <https://www.franceinter.fr/justice/pedocriminalite-je-ne-peux-pas-porter-toute-la-misere-du-monde-des-vidéos-que-j-ai-visionnées>.

**132.** "Section 3 : Du viol, de l'inceste et des autres agressions sexuelles (Articles 222-22 à 222-33-1)," *Légifrance*, Article 222-27: [https://www.legifrance.gouv.fr/codes/article\\_lc/LEGIARTI000006417689](https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000006417689).

**133.** "Section 5 : De la mise en péril des mineurs (Articles 227-15 à 227-28-3)," *Légifrance*, Article 227-23: [https://www.legifrance.gouv.fr/codes/article\\_lc/LEGIARTI000043409170](https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000043409170).

The second conviction of a child sex offender involved in live online child sexual abuse in France is the case of a 50-year-old male individual who had been already known by authorities for previous CSAM-offences. The perpetrator engaged in live online child sexual abuse for a period of at least ten years and possessed more than 4 million CSAM over the years. Similar to the previous case, despite these serious criminal offences and the severe harm caused to multiple child victims over a significant number of years, the perpetrator was punished by six years imprisonment for complicity of sexual assault and for CSAM possession.<sup>134</sup>

## THE NETHERLANDS

The Dutch Criminal Code criminalizes the rape of minors under two provisions based on the age of the child victim. According to Section 244, "Any person who engages in acts comprising or including sexual penetration of the body with a person who is under the age of twelve years, shall be liable to a term of imprisonment not exceeding twelve years or a fine of the fifth category." On the other hand, according to Section 245, "Any person who, out of wedlock, engages in lewd acts comprising or including sexual penetration of the body with a person who has reached the age of twelve years but not yet sixteen years, shall be liable to a term of imprisonment not exceeding eight years or a fine of the fifth category."<sup>135</sup>

The Dutch Criminal Code also criminalizes the rape of minors by individuals with a status of power under Article 249:



1. Any person who sexually abuses his minor child, step-child or foster child, his ward, a minor with whose care, education or supervision he is entrusted, or his employee or subordinate who is a minor, shall be liable to a term of imprisonment not exceeding six years or a fine of the fourth category [€19,500 as from 1 January 2012].
2. The following persons shall be liable to the same punishment: 1. the civil servant who sexually abuses a person subject to his authority or entrusted to or placed under his supervision; 2. the director, doctor, teacher,

official, supervisor or staff member of a prison, state institution for the care and protection of children, orphanage, hospital, or charitable institution, who sexually abuses a person admitted to such institution; 3. the person employed in the health care or social care sector who sexually abuses a person who has entrusted himself, as a patient or client, to his assistance or care.<sup>136</sup>

At the time of writing, a new Sexual Offences Bill is in the process of obtaining approval and will be submitted to the Netherlands House of Representatives in spring 2022, which contains a number of reforms to the Dutch Criminal Code regarding rape and sexual behavior: the lower limit for criminality of rape will be lowered; the bill updates criminal law protection against online transgressive sexual behavior, specifically the criminalization of "sex chatting" if adult individuals communicate in a sexual manner with minors; and sexual harassment in public settings (i.e., in the street, on the Internet and social media channels) will be punishable as an offence; In connection with and in anticipation of the Sexual Offences Bill, a bill will be submitted to the House of Representatives which would prohibit preparatory acts for committing child sexual abuse. Additionally, "coercion, violence and threats, while aggravating factors, will no longer be a requirement for conviction."<sup>137</sup> Most importantly, Rape and sexual assault will no longer depend on force but on the absence of sexual consent, and when the

<sup>134</sup>. "Pédocriminalité : une deuxième condamnation en France pour des faits de "livestreaming," *France Inter*, June 4, 2021: <https://www.franceinter.fr/justice/pedocriminalite-une-deuxieme-condamnation-en-france-pour-des-faits-de-livestreaming>.

<sup>135</sup>. "Criminal Code of the Kingdom of Netherlands (1881, amended 2012)," Part XIII. Serious Offences against Civil Status, Section 244 and 245. *Legislationline.org*: <https://www.legislationline.org/documents/section/criminal-codes/country/12/Netherlands/show>.

<sup>136</sup>. "Criminal Code of the Kingdom of Netherlands (1881, amended 2012)," Part XIV. Serious Offences against Public Morals, Section 249. *Legislationline.org*: <https://www.legislationline.org/documents/section/criminal-codes/country/12/Netherlands/show>.

<sup>137</sup>. "New law offers better protection against sexual violence," *Government of The Netherlands*, March 8, 2021: <https://www.government.nl/latest/news/2021/03/08/new-law-offers-better-protection-against-sexual-violence>.

victim shows explicit verbal or physical restraint in behavior, including passive behavior, or when, obvious (non)verbal signs, indicate reluctance on his or her part".<sup>138</sup>

Similar to the provisions in the Belgian Penal Code, rape will be more focused on the absence of consent from the victim of the crime rather than the acts themselves (i.e., coercion, violence and threats). Moreover, rape is defined as an individual who engages with a child and whose acts comprise the sexual penetration of the child victim, however, it is not clear whether the acts must be carried out physically. As a result, law enforcement practitioners may have the ability to prosecute child sex offenders involved in live online child sexual abuse under the rape provision whether it results from the trafficking or solicitation of children for sexual purposes. In the context of the trafficking of children for sexual purposes, children are sexually exploited and therefore cannot give their consent; while in the context of solicitation of children for sexual purposes, children may be subject to coercion, violence and threats.

## ROMANIA

While CSAM provisions pose a significant challenge and may prevent law enforcement practitioners to prosecute child sex offenders involved in live online child sexual abuse, it is possible to sentence perpetrators under Article 218 of the Romanian Criminal Code which criminalizes "sexual intercourse, of any nature, with a person of the other sex or of the same sex, who has not reached the age of 15, shall be punished by strict imprisonment from 3 to 10 years and the prohibition of certain rights".<sup>139</sup> The fact that sexual intercourse is criminalized regardless of its nature may enable law enforcement practitioners to sentence perpetrators involved in live online child sexual abuse even though the acts are not carried out physically. This provision appears to be the most appropriate and accurately reflects the crime, especially in the absence of provisions criminalizing perpetrators involved in live online child sexual abuse and even possessing CSAM. Additionally, the sentence may amount to 12 years for perpetrators "offering or giving the victim money or other benefits, directly or indirectly", which is particularly relevant to perpetrators targeting foreign child victims in

countries where they may be sexually exploited for live online child sexual abuse (e.g., Philippines). The provision establishes punishment of 5 to 15 years imprisonment for acts carried out for the purpose of producing pornographic material; 15 to 20 years if the use of coercion is proven, which is relevant to both perpetrators on the demand and supply side of the crime; and 15 to 25 years if the acts resulted in the victim's death or suicide.

It is also worth mentioning that perpetrators involved in live online child sexual abuse may be prosecuted under Article 217 of the Romanian Criminal Code:



(1) *Sexual intercourse, of any kind, with a person of the opposite sex or of the same sex, by coercion of this person or*

*taking advantage of the person inability for defense or to express will, shall be punished by strict imprisonment from 3 to 10 years and the prohibition of certain rights.*

(2) *The penalty shall be severe detention from 15 to 20 years and the prohibition of certain rights, if:*

- a) the act has been committed by two or more persons together;*
- b) the victim is under the care, protection, education, guard or treatment of the perpetrator;*
- c) the victim is a family member;*
- d) the victim is a minor under the age of 15;*
- e) the victim suffered serious injury of corporal integrity or health.*

<sup>138</sup>. "From force to consent: a new definition of rape in the Netherlands," *Universiteit Leiden*, *leidenlawblog*, March 29, 2021: <https://www.leidenlawblog.nl/articles/no-is-no>.

<sup>139</sup>. "Criminal Code," *ICC Legal Tools Database*, Sexual intercourse with a minor Art. 218: <https://www.legal-tools.org/doc/e4f6c9/pdf/>.

## OTHER JURISDICTIONS



### AUSTRALIA

In the case of DPP (Cth) v Beattie [2017] NSWCCA 301, the perpetrator watched and directed the live online child sexual abuse of 17 boys in the Philippines by paying Philippine traffickers. Furthermore, his external drive contained CSAM in the form of 132 videos of these child victims. He pleaded guilty to 23 offences including possessing CSAM and causing a child under 16 to engage in sexual intercourse outside Australia in his presence.<sup>140</sup> Law enforcement practitioners highlighted that he “was a live spectator and active participant, via real-time video link of the gross sexual abuse of pre-pubescent Filipino boy”. In this regard, he was sentenced to 14 years with a non-parole period of 10 years.<sup>141</sup> The court also pointed out that although a sexual offence causing a child to engage in sexual activity may not include physical contact between the perpetrator and child victims, it still has the same moral culpability as that of a contact sexual offence which results in maximum penalties.<sup>142</sup>



### CANADA

In the case of R v Chicoine, 2019 SKCA 104 (CanLII), the perpetrator paid more than \$20,000 to women in Romania and the Philippines for live online child sexual abuse. He conspired and agreed through means of ICTs to sexually abuse children and produce CSAM which involved at least 15 child victims from these countries. These criminal offences included mothers performing sexual acts against their children as young as 10 to 18 months old. The perpetrator targeted child victims from impoverished countries and was aware that the female traffickers were the child victims’ mothers. The perpetrator was ultimately sentenced to 15 years of imprisonment. The Crown relied on several cases involving “hands-on” sexual assaults and pointed out the fact that he was actively involved in the sexual abuse of child victims by requesting, paying and directing the sexual abuse of these child victims carried out by their own mothers.<sup>143</sup>

## SCOTLAND

The case of Matthew Bell may be the first case of live online child sexual abuse in Scotland. The perpetrator contacted mothers in the Philippines and requested the sexual abuse of their children by offering them money. He was sentenced under provisions pertaining to rape by pleading guilty to four charges under the Sexual Offences Act including “inciting the commission” of the abuse of children as well as well as conspiring to rape a woman. In this regard, the judge stated the following: “I propose to sentence you on no different basis that if you had undertaken the sexual abuse in person [and] what you actually did, by involving proxy third-party abusers, merits an even more substantial period of imprisonment.” Additionally, the judge stated that a lengthy extension period was also necessary due to the gravity of the criminal offences and sentenced the perpetrator to 12 years of imprisonment.<sup>144</sup>

**140.** “Child Exploitation,” s 272.8 and s 272.9 Criminal Code Sexual intercourse/ sexual activity with child outside Australia,” and s.474.19(1) Criminal Code use carriage service for child pornography material (material regarding child under 18 years of age), *Office of the Commonwealth Director of Public Prosecutions (CDPP)*: <https://www.cdpp.gov.au/crimes-we-prosecute/child-exploitation>.

**141.** “Sydney paedophile, 44, who live streamed abuse of children overseas has jail time increased to 14 years after court found his sentence was ‘manifestly inadequate,’” *Daily Mail*, December 11, 2017: <https://www.dailymail.co.uk/news/article-5166681/Paedophile-live-streamed-child-abuse-jail-time-increased.html>.

**142.** “Public Consultation Paper, Australian Border Force: National Plan to Combat Modern Slavery 2020-24,” *International Justice Mission*: <https://www.homeaffairs.gov.au/reports-and-pubs/files/national-action-plan-2020-24/nap-2020-24-submission-international-justice-mission-philippines.pdf>.

**143.** “R v Chicoine, 2019 SKCA 104 (CanLII),” *Canadian Legal Information Institute*, October 16, 2019: <https://www.canlii.org/en/sk/skca/doc/2019/2019skca104/2019skca104.html>.

**144.** “HORROR HOME Inside lair of sick Ayrshire paedophile who paid 93p to watch young girl abused live online – with chilling pictures of teddy bear, baby oil and girls’ hair bobbles,” *The Scottish Sun*, July 25, 2019: <https://www.thescottishsun.co.uk/news/4527952/matthew-bell-irvine-ayrshire-paedophile-child-abuse-jailed-home/>; “Vile Scots paedophile caged after paying woman 93p to sexually abuse kid while he watched on Skype,” *Daily Record*, July 25, 2019: <https://www.dailyrecord.co.uk/news/scottish-news/vile-scots-paedophile-caged-after-18774071>.

## Punishing Perpetrators under the Solicitation of Children for Sexual Purposes Offences

The criminalization of the solicitation of children for sexual purposes offences may enable law enforcement practitioners to identify and prevent latent or undetected child sex offenders who are targeting children in order to engage in live online child sexual abuse. Moreover, it may also prevent child victims from further victimization, therefore, it is necessary to criminalize the solicitation of children for sexual purposes regardless of whether child sex offenders intend to meet offline or not, and whether the actual meeting/sexual abuse takes place or not. However, according to the Broadband Commission for Sustainable Development's Working Group on Child Online Safety: "Of the 60 countries covered by The Economist Intelligence Unit Out of the Shadows Index, only 21 have specific legislation to outlaw online grooming."<sup>145</sup>

The internet poses a significant threat given that it provides unprecedented, although relative, anonymity. Perpetrators are able to conceal their real identity as well as physical characteristics and dare to commit acts against children which they would not carry out physically or in public settings.

### **BELGIUM**

The Belgian Penal Code criminalizes the solicitation of children for sexual purposes. According to Art. 377quater, an adult individual who proposes, by means of ICTs, a child under 16 years of age to meet in order to sexually engage with the child is punished by one to five years imprisonment on the condition there is evidence leading to an actual meeting after subsequent to the proposition.<sup>146</sup> This provision considers the critical role of technology in the context of the solicitation of children for sexual purposes (i.e., grooming), especially with regard to live online child sexual abuse. However, it requires a physical meeting to take place, or the attempt to physically meet a child under 16 years of age in order to sexually engage with the child. In this regard, proof of material acts leading to such

a meeting is required to prosecute perpetrators. This provision is primarily focusing on physical meetings and is therefore not applicable in the context of live online child sexual abuse. It is worth recalling that the perpetrators involved in this crime may use ICTs to groom child victims with the aim of sexually abusing them without having to meet physically. The use of ICTs enables perpetrators to target a higher number of vulnerable child victims from virtually anywhere in the world as well as younger child victims. The sexual abuse carried out online also enables perpetrators to avoid the risk of detection which may result from acts carried out physically against child victims.

While the provision under Art. 377quater is not applicable to live online child sexual abuse, it is possible to prosecute or convict child sex offenders involved in this crime on the basis of Art. 433bis/1, which criminalizes the act of "luring minors on the Internet for criminal or tortious purposes." This provision establishes three months to five years of imprisonment for any adult individual communicating via ICTs to any (presupposed) minor with the intent to commit a crime or an offence. As a result, perpetrators who groom child victims with the intent to commit acts of live online child sexual abuse may be prosecuted and convicted under this provision, which may apply to a wide variety of crimes or offences not only limited to crimes or offences of a sexual nature. Additionally, it does not require a physical meeting to take place. However, it is worth noting that the perpetrators should use one or more of the following methods to be prosecuted: when the perpetrator lies or keeps silent on his identity, age and capacity; when the perpetrator specified the discretion of their communication; when the perpetrator offered

<sup>145</sup>. "Child Online Safety: Minimizing the Risk of Violence, Abuse and Exploitation Online," *Broadband Commission for Sustainable Development's Working Group on Child Online Safety*, October 2019: <https://www.broadbandcommission.org/publication/child-online-safety/>; and "Out of the Shadows: Shining Light on the Response to Child Sexual Abuse and Exploitation," *The Economist Intelligence Unit Out of the Shadows Index*: <https://outoftheshadows.eiu.com/>.

<sup>146</sup>. "Code pénal," Chapitre V. Idu voyeurisme, de la diffusion non consensuelle d'images et d'enregistrements à caractère sexuel, de l'attentat à la pudeur et du viol, *Legislationline*, Art. 377quater: [https://www.legislationline.org/download/id/9628/file/BELG\\_CC\\_fr.pdf](https://www.legislationline.org/download/id/9628/file/BELG_CC_fr.pdf).

a gift or any kinds of advantages; and when the perpetrator used any other ruse.<sup>147</sup> This provision acknowledges that the mere contact with children online with the intent to commit a crime or an offence is considered as a crime. Nevertheless, it is worth noting that there must be evidence of the aforementioned methods in order to prosecute or sentence child sex offenders. In addition, this provision enables law enforcement practitioners to sentence perpetrators who attempt to groom child victims with the intent to sexually abuse them in real time although the acts do not take place (e.g., based on chat logs).

## ■ ■ SWEDEN

The Swedish Criminal Code criminalizes the solicitation of children for sexual purposes (i.e., grooming) under Chapter 6, Section 10a: "A person who, with the aim of committing an act against a child under fifteen years of age for which a penalty is provided in Section 4, 5, 6, 8 or 10, proposes or agrees to a meeting with the child, is guilty of contact with a child for sexual purposes and is sentenced to a fine or to imprisonment for at most two years."<sup>148</sup> This provision is primarily focusing on physical meetings and is therefore not applicable in the context of live online child sexual abuse given that it requires a physical meeting to take place.

## ■ ■ FRANCE

The solicitation of children for sexual purposes is criminalized under Article 227-22-1, which states that an adult individual who solicit a child under the age of 15 years (or an individual appearing as such) for sexual purposes by using ICTs is punished by two years imprisonment and a fine of 30,000 euros. The sentence amounts to five years imprisonment and a fine of 75,000 euros if the solicitation is followed by a physical meeting.<sup>149</sup>

As per the French Penal Code, the use of ICTs constitutes an aggravating factor with respect to sexual offences according to Article 222-24(8).<sup>150</sup> Furthermore, inciting a minor, through ICTs, directly or through a third person, to perform an act of a sexual nature is criminalized even if this incitement is not followed by any act performed by the minor as per Article 227-22-2 of the French Penal Code, and results in seven years of imprisonment and a fine of 100,000 euros. If this criminal offence is committed

against children under 15 years of age, the punishment amounts to ten years of imprisonment and a fine of 150,000 euros. When it is committed as part of an organized crime group, the fine amounts to one million euros.<sup>151</sup> This provision is particularly relevant for cases of live online child sexual abuse resulting from both the solicitation and trafficking of children for sexual purposes, since perpetrators may incite children directly (solicitation) or indirectly through a third person (trafficking). This provision takes into account the act of solicitation regardless of whether the perpetrator intends to meet the child victim physically or not. As a result, this provision is applicable to live online child sexual abuse resulting from the solicitation of children for sexual purposes.

## ■ ■ THE NETHERLANDS

Following the ratification of the Lanzarote Convention, two changes targeting the solicitation of children for sexual purposes were made to the Dutch Criminal Code in 2010.<sup>152</sup> The solicitation of children for sexual purposes is criminalized under Articles 248a and 248e. The former criminalizes acts consisting of grooming children in order to sexually engage with them, while the latter refers to the act of grooming children in order to sexually engage with them physically. As a result, perpetrators who groom child victims with the intent to commit acts of live online child sexual abuse may be prosecuted and convicted under Article 248a. In this regard, this

**147.** "Code pénal," Chapitre III. - (des atteintes aux mineurs, [aux personnes vulnérables] et à la famille.), *Legislationline*, Art. 433bis/1 : [https://www.legislationline.org/download/id/9628/file/BELG\\_CC\\_fr.pdf](https://www.legislationline.org/download/id/9628/file/BELG_CC_fr.pdf).

**148.** "The Swedish Criminal Code," Chapter 6 – On sexual offences, *Legislationline*, Section 10a: [https://www.legislationline.org/download/id/9097/file/Sweden\\_CC.pdf](https://www.legislationline.org/download/id/9097/file/Sweden_CC.pdf).

**149.** "Section 5 : De la mise en péril des mineurs (Articles 227-15 à 227-28-3)," *Légifrance*, Article 227-22-1: [https://www.legifrance.gouv.fr/codes/article\\_lc/LEGIART-1000043409180](https://www.legifrance.gouv.fr/codes/article_lc/LEGIART-1000043409180).

**150.** "Section 3 : Du viol, de l'inceste et des autres agressions sexuelles (Articles 222-22 à 222-33-1)," *Légifrance*, Article 222-24(8): [https://www.legifrance.gouv.fr/codes/article\\_lc/LEGIART1000043409300](https://www.legifrance.gouv.fr/codes/article_lc/LEGIART1000043409300).

**151.** "Section 5 : De la mise en péril des mineurs (Articles 227-15 à 227-28-3)," *Légifrance*, 227-22-2: [https://www.legifrance.gouv.fr/codes/section\\_lc/LEGI-TEXT000006070719/LEGISCTA000043405084/#LEGISCTA000043405084](https://www.legifrance.gouv.fr/codes/section_lc/LEGI-TEXT000006070719/LEGISCTA000043405084/#LEGISCTA000043405084).

**152.** "Crime and Crime Prevention, Sentencing," *Government of the Netherlands*: <https://www.government.nl/topics/crime-and-crime-prevention/sentencing>.

provision does not require a physical meeting to take place and acknowledges that the mere contact with children online with the intent to commit sex-based crimes is considered as a criminal offence.



**Article 248a:**

*Any person who, by means of gifts or promises of money or goods, by abuse of the authority arising from de facto relationships or by deception, intentionally induces a person, whom he knows or has reasonable cause to suspect is under the age of eighteen years, to engage in lewd acts or to tolerate such acts performed by him, shall be liable to a term of imprisonment not exceeding four years or a fine of the fourth category.*

**Article 248e:**

*Any person who, by means of a computerised device or system or by making use of a communication service, arranges to meet a person whom he knows, or has reasonable cause to suspect has not yet reached the age of sixteen years, with the intention of engaging in lewd acts with this person or of creating an image of a sexual act in which this person is involved, shall, if he undertakes any action intended to bring about that meeting, be liable to a term of imprisonment not exceeding two years or a fine of the fourth category.<sup>153</sup>*

## ROMANIA

The Romanian Criminal Code criminalizes the solicitation of children for sexual purposes (i.e., grooming) under Article 221(4): "The act of alluring a person in order to commit sexual intercourse with a minor of the opposite sex or of the same sex shall be punished by strict imprisonment from one to 5 years."<sup>154</sup> This provision is particularly relevant for cases live online child sexual abuse resulting from the solicitation of children for sexual purposes (i.e., grooming) as well as the trafficking of children for sexual purposes. However, it is not clear whether sexual intercourse refers to acts committed physically or not.

## Punishing Perpetrators under Trafficking in Human Beings Offences

### ROMANIA

The criminalization of sexual exploitation is particularly important for countries of supply with respect to live online child sexual abuse. In Romania, the trafficking in human beings is criminalized as per Law 678/2001, which contains provisions applicable to the sexual exploitation of children:



(1) *The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation*

*shall be considered an offence and shall be punished by imprisonment for 5 to 15 years and interdiction of certain rights.*

(2) *If the offence referred to in paragraph (1) is committed by means of threats and violence or use of other forms of coercion, of kidnapping, of fraud or of deception, of the abuse of power or by taking advantage of the minor's inability to defend himself or to express his will or by offering, by giving or receiving payments or benefits to achieve the consent of a person having control over the minor, it is punishable by imprisonment for 7 to 18 years and interdiction of certain rights.*

(3) *Acts referred to in paragraphs (1) and (2) committed under the circumstances set forth in article 12, paragraph (2) shall be sanctioned by imprisonment for 7 to 18 years and interdiction of certain rights for an offence established in accordance with paragraph*

<sup>153</sup>. "Criminal Code of the Kingdom of Netherlands (1881, amended 2012)," Part XIV. Serious Offences against Public Morals, Section 248a and 248e, *Legislationline*: [https://www.legislationline.org/download/id/6415/file/Netherlands\\_CC\\_am2012\\_en.pdf](https://www.legislationline.org/download/id/6415/file/Netherlands_CC_am2012_en.pdf).

<sup>154</sup>. "Criminal Code," *ICC Legal Tools Database*, Sexual corruption Art.221(4): <https://www.legal-tools.org/doc/e4f6c9/pdf/>.

(1) and 10 to 20 years imprisonment and interdiction of certain rights for an offence established in accordance with paragraph (2).

(4) Acts established in accordance with this article resulting in the death or suicide of the victim, shall be sanctioned by imprisonment for 15 to 25 years imprisonment and interdiction of certain rights.<sup>155</sup>

It is worth noting that “offenders are also liable to criminal charges in cases where victims of trafficking have consented” as per Article 16 and criminal attempts are also criminalized as per Article 15 of Law 678/2001.

## National Legislation Directly Punishing Live Online Child Sexual Abuse



### LEGAL INSTRUMENTS IN THE REPUBLIC OF THE PHILIPPINES

The Philippines ratified the Convention on the Rights of the Child (“CRC”) in 1990, the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (“OPSC”) in 2002 and the International Labour Organization (“ILO”) Convention No. 182 in 2000. The Philippines’ legal framework is the most comprehensive and in compliance with the international standards, especially compared to the aforementioned national legislations as well as the other countries in Southeast Asia.



#### Special Protection of Children against Abuse, Exploitation and Discrimination Act

The Act contains an obligation to criminalize live online child sexual abuse under Article V, which imposes imprisonment for hiring, employing, using, persuading, inducing and coercing children to take part in obscene exhibitions and indecent shows including exhibitions and shows performed offline or online. While the term “indecent” is not appropriate and involves a subjective value judgement (i.e., who has the authority to define what is indecent or not?),

it directly criminalizes live online child sexual abuse on both the demand and supply sides.



#### ARTICLE V

#### Obscene Publications and Indecent Shows

Sec. 9. Obscene Publications and Indecent Shows. – Any person who shall hire, employ, use, persuade, induce or coerce a child to perform in obscene exhibitions and indecent shows, whether live or in video, or model in obscene publications or pornographic materials or to sell or distribute the said materials shall suffer the penalty of prison mayor in its medium period.

If the child used as a performer, subject or seller/distributor is below twelve (12) years of age, the penalty shall be imposed in its maximum period.

Any ascendant, guardian, or person entrusted in any capacity with the care of a child who shall cause and/or allow such child to be employed or to participate in an obscene play, scene, act, movie or show or in any other acts covered by this section shall suffer the penalty of prison mayor in its medium period.<sup>156</sup>



#### Anti-Child Pornography Act

The Act prohibits live online child sexual abuse under Section 4(a) by stating that hiring, employing, using, persuading, inducing and coercing children to perform in the creation and production of any form of child pornography is unlawful for any individual.

<sup>155</sup>. “LAW 678/2001 on Preventing and Combating Trafficking in Human Beings amended and supplemented by GEO no. 143/2002, Law 39/2003, GEO no. 79/2005,” *ICC Legal Tools Database*, Article 13: <https://www.legal-tools.org/doc/75a7aa/pdf/>.

<sup>156</sup>. “Republic Act 7610: Special Protection of Children Against Abuse, Exploitation and Discrimination Act,” *Philippines Commission on Women*: <https://pcw.gov.ph/republic-act-7610-special-protection-of-children-against-abuse-exploitation-and-discrimination-act/#:~:text=Philippine%20Standard%20Time%3A-.Republic%20Act%207610%3A%20Special%20Protection%20of%20Children.Abuse%2C%20Exploitation%20and%20Discrimination%20Act&text=AN%20ACT%20PROVIDING%20FOR%20STRONGER.VIOLATION%20AND%20FOR%20OTHER%20PURPOSES.>

Furthermore, the Act prohibits individuals from broadcasting any form of child pornography (Section 4(c)) as well as to access any form of child pornography (Section 4(j)), which allows the prosecution of both the traffickers and facilitators as well as child sex offenders involved in live online child sexual abuse. Moreover, the Act not only criminalizes live online child sexual abuse resulting from the trafficking of children for sexual purposes, but also when it results from the solicitation of children for sexual purposes by criminalizing the latter. The enactment of such legislation may enable countries of the Global North to provide a comprehensive approach towards all forms of live online child sexual abuse, whether they result from the trafficking or solicitation of children for sexual purposes.



**Section 4. Unlawful or Prohibited Acts. – It shall be unlawful for any person:**

*To hire, employ, use, persuade, induce or coerce a child to perform in the creation or production of any form of child pornography;*  
*To produce, direct, manufacture or create any form of child pornography;*  
*To publish offer, transmit, sell, distribute, broadcast, advertise, promote, export or import any form of child pornography;*  
*To possess any form of child pornography with the intent to sell, distribute, publish, or broadcast: Provided. That possession of three (3) or more articles of child pornography of the same form shall be prima facie evidence of the intent to sell, distribute, publish or broadcast;*  
*To knowingly, willfully and intentionally provide a venue for the commission of prohibited acts as, but not limited to, dens, private rooms, cubicles, cinemas, houses or in establishments purporting to be a legitimate business;*  
*For film distributors, theaters and telecommunication companies, by themselves or in cooperation with other entities, to distribute any form of child pornography;*  
*For a parent, legal guardian or person having custody or control of a child to knowingly permit the child to engage, participate or assist in any form of child pornography;*  
*To engage in the luring or grooming of a child;*

*To engage in pandering of any form of child pornography;*  
*To willfully access any form of child pornography;*  
*To conspire to commit any of the prohibited acts stated in this section. Conspiracy to commit any form of child pornography shall be committed when two (2) or more persons come to an agreement concerning the commission of any of the said prohibited acts and decide to commit it; and*  
*To possess any form of child pornography.<sup>157</sup>*



**Cybercrime Prevention Act**

The Act legislates content-related cybercrimes and states that the punishment applicable to the acts prohibited by the Anti-Child Pornography Act (see hereabove) must be increased by one degree, in accordance with the penalties duration's scale provided under Title Three, Chapter Three of the ACT NO. 3815 An Act Revising the Penal Code and Other Penal Laws if those acts are committed using a computer system. In addition, the act outlaws "cybersex," regardless of whether children are involved or whether it is between consenting adult individuals. As a result, this provision leaves no room for interpretation in the context of live online child sexual abuse.



**CHAPTER II  
PUNISHABLE ACTS  
SEC. 4. Cybercrime Offenses.**

*– The following acts constitute the offense of cybercrime punishable under this Act:*

[...]

(c) Content-related Offenses:

(1) Cybersex. – *The willful engagement, maintenance, control, or operation, directly or indirectly, of any lascivious exhibition of sexual organs or sexual activity, with the aid of a computer system, for favor or consideration.*

<sup>157</sup>. "Republic Act 9775: Anti-Child Pornography Act of 2009," *Philippines Commission on Women*: <https://pcw.gov.ph/republic-act-9775-anti-child-pornography-act-of-2009/>.

(2) *Child Pornography. – The unlawful or prohibited acts defined and punishable by Republic Act No. 9775 or the Anti-Child Pornography Act of 2009, committed through a computer system: Provided, That the penalty to be imposed shall be (1) one degree higher than that provided for in Republic Act No. 9775.*<sup>158</sup>

## LEGAL INSTRUMENTS IN THE UNITED STATES

The U.S. Code criminalizes live online child sexual abuse on the basis of several provisions. Similar to India's Information Technology Act of 2008, the U.S. Code enables law enforcement practitioners to broadly interpret the law in order to punish child sex offenders involved in live online child sexual abuse by punishing: "Any person who employs, uses, persuades, induces, entices, or coerces any minor to engage in [...] any sexually explicit conduct for the purpose of producing any visual depiction of such conduct or for the purpose of transmitting a live visual depiction of such conduct".<sup>159</sup> While the "transmission of a live visual depiction" directly refers to live online child sexual abuse offences, these provisions are primarily focusing on the sexual exploitation of children (i.e., the supply). In this regard, the U.S. Code also prohibits the sexual exploitation of children in commercial sex acts on account of which anything of value is given to or received by any person.<sup>160</sup> As a result these provisions are more applicable for operational structures of live online child sexual abuse resulting from the trafficking of children for sexual purposes, which are financially driven. Nevertheless, it is possible to argue that child sex offenders involved in these operational structures could be considered under such provisions focused on the sexual exploitation of children given that they primarily target child victims in foreign countries impacted by poverty. Those perpetrators exploit the economic disparity of child victims and sexually abuse them in exchange for payment. The U.S. Code establishes a mandatory minimum punishment of 15 years imprisonment for first time-convicted perpetrators, 25 years imprisonment for second-time perpetrators, and 35 years up to life imprisonment for violators with two or more than two prior convictions.<sup>161</sup>

It is worth mentioning that live online child sexual abuse is not necessarily financially driven. In the case of William Augusta, approximately 15 like-minded individuals engaged in live online child sexual abuse by creating a secure online space on a video conferencing website where they could transmit pre-recorded CSAM as well as live online child sexual abuse between themselves. They also created such space in order to minimize any digital evidence of CSAM being located on their electronic devices. In addition to transmitting pre-recorded CSAM, William Augusta sexually abused a six year-old child while transmitting the sexual abuse in real time to the other perpetrators who took an active part in the sexual abuse of the child victim. The sexual abuse committed against the child victim also involved acts of sadism.<sup>162</sup> This perpetrator was sentenced to 45 to 90 years imprisonment for multiple counts of rape and CSAM-related offences.<sup>163</sup> As regards the other perpetrators, they received sentences ranging from ten to 35 years imprisonment as well as a lifetime of supervised release. While CSAM-related provisions and resulting sentences do not reflect the nature of the crime of live online child sexual abuse,

<sup>158</sup>. "Republic Act No. 10175," *Official Gazette*: <https://www.officialgazette.gov.ph/2012/09/12/republic-act-no-10175/>.

<sup>159</sup>. "U.S. Code," *Cornell Law School Legal Information Institute*, 18 U.S. Code § 2251 - Sexual exploitation of children: <https://www.law.cornell.edu/uscode/text/18/2251>.

<sup>160</sup>. "U.S. Code," *Cornell Law School Legal Information Institute*, 18 U.S. Code § 1591 - Sex trafficking of children or by force, fraud, or coercion: <https://www.law.cornell.edu/uscode/text/18/1591>.

<sup>161</sup>. "U.S. Code," *Cornell Law School Legal Information Institute*, 18 U.S. Code § 2251 - Sexual exploitation of children: <https://www.law.cornell.edu/uscode/text/18/2251>.

<sup>162</sup>. "Two Men Convicted of Engaging in Child Exploitation Conspiracy," *The United States Department of Justice*, January 25, 2018: <https://www.justice.gov/opa/pr/two-men-convicted-engaging-child-exploitation-conspiracy>; "Recorded rapes of 6-year-old land 20-year-old behind bars for up to 90 years," *The Patriot-News*, February 28, 2017: [https://www.pennlive.com/news/2017/02/byers\\_augusta\\_recorded\\_rapes.html](https://www.pennlive.com/news/2017/02/byers_augusta_recorded_rapes.html); "HIV-positive man pleads guilty to raping 6-year-old while another man recorded the act," *The Patriot-News*, March 8, 2016: [https://www.pennlive.com/news/2016/03/ira\\_task\\_sexual\\_abuse\\_children.html](https://www.pennlive.com/news/2016/03/ira_task_sexual_abuse_children.html).

<sup>163</sup>. "U.S. Code," *Cornell Law School Legal Information Institute*, 18 U.S. Code Chapter 109A - Sexual Abuse and 18 U.S. Code § 2252A - Certain activities relating to material constituting or containing child pornography <https://www.law.cornell.edu/uscode/text/18/part-I/chapter-109A>, <https://www.law.cornell.edu/uscode/text/18/2252A>.

the punishments appropriately reflect the severity of the sexual abuse committed in this case. It is worth noting that punishments in the U.S. legislation are significantly higher in comparison to European jurisdictions and the aforementioned jurisdictions. Nevertheless, this case also highlights the need for provisions to criminalize live online child sexual abuse as it clearly demonstrates the perpetrators' intent to engage in this crime in order to avoid being caught with digital evidence on their electronic devices.

## LEGAL INSTRUMENTS IN INDIA

India's Information Technology Act of 2008 indirectly criminalizes live online child sexual abuse by outlawing the transmission of material in any electronic form that depicts children engaged in sexual acts. As a result, it enables law enforcement practitioners to broadly interpret the law in order to punish child sex offenders involved in live online child sexual abuse either as a result of the solicitation of children for sexual purposes, or the trafficking of children for sexual purposes.

According to Section 67B of the Information Technology Act of 2008,



*Whoever, (a) publishes or transmits or causes to be published or transmitted material in any electronic form*

*which depicts children engaged in sexually explicit act or conduct or [...] (c) cultivates, entices or induces children to online relationship with one or more children for and on sexually explicit act or in a manner that may offend a reasonable adult on the computer resource [...] shall be punished on first conviction with imprisonment of either description for a term which may extend to five years and with a fine which may extend to ten lakh [100,000] rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to seven years and also with fine which may extend to ten lakh [100,000] rupees.<sup>164</sup>*

In India, the Protection of Children from Sexual Offences Act of 2012 was updated with new provisions in 2020 by criminalizing the use of children for pornographic purposes in any form of media as per Section 14, which also includes the portrayal of a child's sexual organs, the sexual depiction of a child and the participation of a child in real or simulated sexual activity. This criminal offence is punished by a punishment of at least five years of imprisonment.<sup>165</sup> This provision tackles the supply side of live online child sexual abuse and is particularly relevant for traffickers and facilitators who sexually exploit children. It is worth pointing out that according to the Act, the storage of CSAM for commercial purposes is criminalized, but storage for non-commercial purposes is not. As a result, there is no appropriate provision to tackle the demand side of the crime as law enforcement practitioners are unable to prosecute child sex offenders who engage in live online child sexual abuse without capturing CSAM being transmitted in real time online.<sup>166</sup>



**164.** "The Information Technology ACT, 2008," *Ministry of Law, Justice and Company Affairs (Legislative Department)*, XI. OFFENCES, 67 B Punishment for publishing or transmitting of material depicting children in sexually explicit act, etc. in electronic form: [https://police.py.gov.in/Information%20Technology%20Act%202000%20-%202008%20\(amendment\).pdf](https://police.py.gov.in/Information%20Technology%20Act%202000%20-%202008%20(amendment).pdf).

**165.** "The Protection of Children from Sexual Offences Act 2012," *Indian Laws Info*, Section 14, Punishment for using child for pornographic purposes: <https://www.indian-lawsinfo.com/Home/Section/3908/Section-14-in-The-Protection-of-Children-from-Sexual-Offences-Act--2012/Punishment-for-using-child-for-pornographic-purposes>.

**166.** "The Protection of Children from Sexual Offences Act 2012," *Indian Laws Info*, Section 15, Punishment for storage of pornographic material involving child: <https://www.indianlawsinfo.com/Home/Section/3908/Section-14-in-The-Protection-of-Children-from-Sexual-Offences-Act--2012/Punishment-for-using-child-for-pornographic-purposes>.

# PREVENTIVE MEASURES FOR CHILD SEX OFFENDERS

## Punishing Attempt Crimes

The aim of criminalizing attempt crimes in relation to child sexual abuse and exploitation is to prosecute perpetrators who demonstrate an inclination to commit sex-based crimes against children but most importantly to prevent children from further harm and to act before such crimes are committed and child victimized. In addition, criminalizing attempt crimes may serve as an early warning to child sex offenders although the crimes are incomplete and deter them from committing such crimes in the future. In this regard, it is important to draw a clear line between what constitutes an attempt crime and what does or does not constitute a crime. Live online child sexual abuse may be divided into different stages depending on the operative structure. In the context of the solicitation and the sexual extortion of children for sexual purposes, the attempt of sexually abusing or sexually engaging with children through means of ICTs may be considered as an attempt crime. As regards family-run and organized operations, the request or arrangement of the sexual abuse of children with traffickers or facilitators and the payment for committing such acts even though they do not take place may be considered as an attempt crime as well. It would be an effective and preventative approach in the context of undercover investigations when child sex offenders request the sexual abuse of children, come to an arrangement or make payments with undercover police officers instead of traffickers or facilitators. As a result, evidence resulting from the communication between child sex offenders and children, or traffickers and facilitators may be considered sufficient to prove the deliberate

intention of committing sex-based crimes against children. One of the most significant benefits of criminalizing attempt crimes is that it would obviate the necessity of providing evidence that live online child sexual abuse occurred in the absence of child sexual abuse material being captured and saved, which is one of the most challenging aspects of this phenomenon.

According to the Article 11 – Attempt and aiding or abetting of the Budapest Convention:



(1) *Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences*

*under its domestic law, when committed intentionally, aiding or abetting the commission of any of the offences established in accordance with Articles 2 through 10 of the present Convention with intent that such offence be committed.*

(2) *Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, an attempt to commit any of the offences established in accordance with Articles 3 through 5, 7, 8, and 9.1.a and c of this Convention.*

(3) *Each Party may reserve the right not to apply, in whole or in part, paragraph 2 of this article.<sup>167</sup>*

**167.** "Convention on Cybercrime," Council of Europe, Article 11 – Attempt and aiding or abetting of the Budapest Convention: <https://www.coe.int/en/web/cybercrime/the-budapest-convention>.

This article criminalizes attempts to commit sexual offences against children stated as per Article 9 – Offences related to child pornography of the Budapest Convention, and particularly: (a) producing child pornography for the purpose of its distribution through a computer system; and (c) distributing or transmitting child pornography through a computer system. However, this the Member States' discretion to apply transpose the legislation for these criminal offences. In the context of live online child sexual abuse, this is necessary to criminalize attempts due to the fact that the crime is deliberate. The perpetrator is fully aware of the acts carried out against children as they may target vulnerable individuals and children, proactively request/order the sexual abuse of children, conduct payments and negotiate the sexual acts to be carried out. This is also applicable for perpetrators who are proposed to sexually engage with children in real time online by traffickers and facilitators and accept the proposal as they deliberately decide to commit the crime.

In The Netherlands, it is possible to punish attempts to engage in live online child sexual abuse as per Section 45 of the Dutch Criminal Code, which states that "An attempt to commit a serious offence shall be punishable if the intention of the offender has revealed itself by a commencement of the performance of the criminal act. 2. In the case of an attempt, the maximum of the principal punishments set for the serious offence shall be reduced by one third."<sup>168</sup>

In France, according to Article 121-4 of the Penal Code, a person attempting to commit a felony ("crime") or, if expressly provided by the law, a misdemeanor ("délit"), is considered as perpetrator of said offence and is subject to the same criminal sanctions as the offender. On the basis of Article 121-5, a criminal attempt is constituted where the person took steps to commit the offence ("commencement d'exécution") but the offence did not occur for external reasons not intended by the offender ("*circonstances indépendantes de la volonté de son auteur*"). Hence, for sexual offences considered as a felony ("crime" - including rape), the attempt to commit the offence may in all cases be prosecuted if it meets the above conditions for the existence of an attempt.<sup>169</sup> For sexual offences other than rape (such as sexual assault) considered as misdemeanors ("*délits*"), Articles 222-31<sup>170</sup> and

227-27-2<sup>171</sup> of the French Penal Code expressly state that the attempts to commit such offences are subject to the same sanctions as the offence itself, hence they may be prosecuted if they meet the above conditions for the existence of an attempt. As regards the offence of recording, transmitting or distributing CSAM, and the offences of regularly accessing a communication service displaying CSAM and purchasing or possessing CSAM, the French Penal code criminalizes the attempt to commit these offences as per Article 227-23. This provision may be used for perpetrators who attempt to engage in live online child sexual abuse by requesting and/or negotiating the acts of sexual abuse to be carried out or who make payments for these acts to take place. The offence of making offers or promises, or proposing gifts or any other advantage to a person, in order for this person to commit rape or a sexual abuse including outside the national territory as described earlier is criminalized under Article 222-26-1 and punished by ten years of imprisonment and a fine of 150,000 euros.<sup>172</sup> This provision is particularly relevant for perpetrators engaging in live online child sexual who request acts of sexual abuse and make payments to traffickers and facilitators whether they are abroad or not.

**168.** "Criminal Code of the Kingdom of Netherlands (1881, amended 2012)," *Legislationline*, Part IV. Attempt and Preparation, Section 45; <https://www.legislationline.org/documents/section/criminal-codes/country/12/Netherlands/show>.

**169.** "Titre II : De la responsabilité pénale (Articles 121-1 à 122-9)," *Légifrance*, Article 121-4 and 121-5; [https://www.legifrance.gouv.fr/codes/section\\_lc/LEGI-TEXT000006070719/LEGISCTA000006149817/#LEGISCTA000006149817](https://www.legifrance.gouv.fr/codes/section_lc/LEGI-TEXT000006070719/LEGISCTA000006149817/#LEGISCTA000006149817).

**170.** "Section 3 : Du viol, de l'inceste et des autres agressions sexuelles (Articles 222-22 à 222-33-1)," *Légifrance*, Article 222-31; [https://www.legifrance.gouv.fr/codes/section\\_lc/LEGITEXT000006070719/LEGISCTA000006165281/#LEGISCTA0000043409037](https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000006070719/LEGISCTA000006165281/#LEGISCTA0000043409037).

**171.** "Section 5 : De la mise en péril des mineurs (Articles 227-15 à 227-28-3)," *Légifrance*, 227-27-2; [https://www.legifrance.gouv.fr/codes/section\\_lc/LEGITEXT000006070719/LEGISCTA000006165321/#LEGISCTA000006165321](https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000006070719/LEGISCTA000006165321/#LEGISCTA000006165321).

**172.** "Section 3 : Du viol, de l'inceste et des autres agressions sexuelles (Articles 222-22 à 222-33-1)," *Légifrance*, Article 222-26-1; [https://www.legifrance.gouv.fr/codes/section\\_lc/LEGITEXT000006070719/LEGISCTA000006181753/#LEGISCTA0000043409028](https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000006070719/LEGISCTA000006181753/#LEGISCTA0000043409028).

## Enhancing Punishments for Child Sex Offenders, Traffickers and Facilitators

The Budapest Convention requires Member States to adopt legislative measures to criminalize “offences related to child pornography” and that such offences should be punishable by effective, proportionate and dissuasive sanctions including by the deprivation of individuals’ liberty.<sup>173</sup> In this regard, it is worth enhancing punishments for child sex offenders and traffickers who are part of organized crime groups in order to tackle both the “supply” and “demand” sides of live online child sexual abuse as well as to develop sustainable long-term prevention. As a result, sex-based crimes against children should carry strict sentences and have a deterrent effect and prevent first-time child sex offenders from reoffending. This is particularly relevant for child sex offenders involved in live online child sexual abuse since they pose a greater danger due to the active role they play in the sexual abuse of children. In the same regard, it is important to criminalize the acts committed by facilitators such as parents or caregiver acquiescing to children being sexually exploited and abused. No parent or caregiver can lawfully consent to the sexual exploitation and abuse of children. Furthermore, such acts constitute a gross violation of trust as well as parental duty and responsibility.

## Therapeutic Treatment

The Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse requires Member States to implement intervention programs or measures for perpetrators of sex-based crimes against children in order to prevent them from reoffending or to reduce the risk of recidivism. In this regard, child sex offenders should have access to these programs or measures “at any time during the proceedings, inside and outside prison, according to the conditions laid down in internal law”.<sup>174</sup> This convention allows flexibility for Member States which are responsible for establishing partnerships and cooperation between competent authorities, especially medical and social services as well as judicial authorities, or any other bodies responsible for the treatment of child sex offenders in accordance with their national legislation. While the effectiveness of such programs and measures may be discussed and is subject to debate, this is critical to assess the dangerousness and risk of reoffending as well as the effectiveness of the programs and measures themselves. In this regard, it is important to regularly conduct assessments and to combine therapeutic treatment with additional prevention initiatives.

The use of therapeutic treatment alone may not be effective due to the nature of the acts committed in the context of live online child sexual abuse. As previously stated, child sex offenders take an active role as they intentionally seek to directly engage with children in order to sexually abuse them. For these child sex offenders, engaging with CSAM may not be enough and therefore they seek to be in control of the sexual abuse in real time. Those child sex offenders take an active role by identifying and targeting particularly vulnerable child victims; requesting and/or directing the sexual abuse of children; paying in order to engage in such activity;

<sup>173</sup>. “Convention on Cybercrime,” *Council of Europe*, Article 13(1) – Sanctions and measures: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTM-Content?documentId=0900001680081561>.

<sup>174</sup>. “Convention on Cybercrime,” *Council of Europe*, Chapter V – Intervention programmes or measures, Article 15 – General principles 1: <https://rm.coe.int/1680084822>.

and grooming and/or sexually extorting children with the aim of sexually abusing them. Nevertheless, the use of ICTs in order to commit these acts in combination with other psychological factors may distort the perpetrators' perception of the gravity of their acts making therapeutic treatment alone less effective.

For example, in a case involving a French aircraft pilot convicted for live online child sexual abuse<sup>175</sup>, the perpetrator referred to child victims as "persons" and the sexual abuse committed via ICTs as "shows". Furthermore, he stated being unable to distinguish children from adult individuals. However, these "shows" involved real sexual abuse against multiple children from the Philippines as young as four years old based on the chat logs that showed distressing requests and orders. The perpetrator also stated suffering from being addicted like someone that would be addicted to alcohol or tobacco while completely disregarding the harm caused to child victims. The criminal investigation revealed that the perpetrator took an active part in online communities of like-minded individuals in which he opened discussions including one called "Girls from Manilla". Additionally, he specially targeted vulnerable children from the Philippines in order to sexually abuse them in real time. While the perpetrator was obliged to go through therapeutic treatment as a result of the sentence, he was also banned from travelling to Asia. This additional prevention initiative takes into account the dangerousness of the perpetrator and may prevent the risk of reoffending abroad upon the perpetrator's release.

Although it does not involve live online child sexual abuse, it is worth mentioning the case of Philippe G., who has been convicted two times for child sexual abuse.<sup>176</sup> The first time, he was accused of sexually abusing five boys while he was the head of a vacation center in France and sentenced to 3 years of imprisonment, half of which on probation. Ten years later, he was arrested for child sexual abuse on 24 children in southern Asia while he was acting on behalf of his organization helping children living in poverty. While Philippe G. was obliged to go through therapeutic treatment as a result of the first sentence and pretended that it helped him to control himself, he travelled in countries with higher levels of poverty, weaker child protection systems and offering easy access to vulnerable

children in order to sexually abuse them. This case demonstrates that therapeutic treatment alone may be ineffective and that additional prevention initiatives such as travel bans would have prevented such perpetrator from reoffending abroad, where children are particularly vulnerable. Furthermore, both of the aforementioned child sex offenders showed a lack of empathy and diminished the gravity of the acts of sexual abuse they committed against the child victims.

## Criminal Records and Information Sharing

In Belgium, any employer hiring an individual to perform professional activity involving contact with children (e.g., education, psycho-medical social work, local youth work, etc.) normally requires a criminal record. As stated hereabove, in practice voluntary work may lack formal procedures in the selection of individuals.

In the Netherlands, a certificate of good conduct<sup>177</sup> can be issued free of charge for volunteers and volunteer organizations. Additionally, an English version is also available for individuals wishing to volunteer abroad. When someone applies for a certificate of good conduct, Justis checks national criminal records and applies a risk-based approach by determining whether the criminal offence is relevant to the position of the candidate: i.e., a speeding offence may not be relevant for volunteer work involving children, but a sexual offence would

<sup>175</sup>. "Pédocriminalité : 'Je ne peux pas porter toute la misère du monde des vidéos que j'ai visionnées,'" *France Inter*, January 14, 2020: <https://www.franceinter.fr/justice/pedocriminalite-je-ne-peux-pas-porter-toute-la-misere-du-monde-des-vidoes-que-j-ai-visionnees>.

<sup>176</sup>. "Oncle, ne me touche pas" : un humanitaire français jugé pour agressions sexuelles sur de jeunes Asiatiques," *France Inter*, May 25, 2021: <https://www.franceinter.fr/oncle-ne-me-touche-pas-un-humanitaire-francais-juge-pour-agressions-sexuelles-sur-de-jeunes-asiatiques> and "Pédophilie: l'humanitaire et ses 'plastic boys,'" *L'express*, February 28, 2018: [https://www.lexpress.fr/actualite/societe/justice/pedophilie-l-humanitaire-et-ses-plastic-boys\\_1988265.html](https://www.lexpress.fr/actualite/societe/justice/pedophilie-l-humanitaire-et-ses-plastic-boys_1988265.html).

<sup>177</sup>. Verklaring Omtrent het Gedrag (VOG).

be relevant. In this regard, Justis decides whether the applicant receives a certificate of good conduct or not based on the position they are applying for.<sup>178</sup> When a Dutch resident or a resident of another European country applies for a certificate of good conduct to work in contact with children, Justis European criminal records via the European Criminal Record Information System ("ECRIS") to ensure that children are protected from previously convicted child sex offenders regardless of their country of origin.<sup>179</sup>

ECRIS is a decentralized system for exchanging information on previous convictions between the European Member States in order to improve the exchange of information on criminal records throughout the European Union. ECRIS ensures this information is exchanged between European Member States in a uniform, fast and compatible way; provides law enforcement practitioners with easy access to comprehensive information on the criminal history of individuals concerned, including in which European countries they have previously been convicted; and removes the possibility for child sex offenders to escape the consequences of their previous convictions in another European Member State. Since 2012, ECRIS has facilitated the exchange of information on criminal records of European citizens. Via this system, any European Member State can deliver criminal records in a standardized electronic format to another European Member State that requests it. as a result, ECRIS enables European Member States to avoid the risk of reoffending of their national citizens.<sup>180</sup>

## Imposing Travel Bans

According to Europol, "there is evidence that supports the link between the live streaming of child sexual abuse and subsequent travelling for the purpose of child sexual exploitation – so-called hands-on offending. Following the live streaming abuse, the soliciting offender can travel to the country/place where the original abuse occurred so they themselves can sexually abuse the child."<sup>181</sup> As a result, in addition to registering child sex offenders and keep track of their activities via national child sex offender registers, restrictions can also be imposed on international travel.

In the United Kingdom, individuals who are subject to the notification requirements of the Sexual Offences Act 2003 must notify the police of all foreign travel<sup>182</sup>. On the basis of the request and the submission of the file, the competent authorities may decide to deny the individual the right to travel abroad or to a particular country. Imposing travel bans is particularly relevant for child sex offenders who targeted particularly vulnerable child victims abroad from vulnerable backgrounds (e.g., Southeast Asia) in the context of live online child sexual abuse. It may also prevent them from travelling in order to escape their jurisdiction's restrictions and physically reoffend abroad in countries with higher levels of poverty, weaker child protection systems and offering easy access to vulnerable children. Nevertheless, the implementation of such restrictions requires the

**178.** Verklaring Omtrent het Gedrag (VOG), Justis Ministerie van Justitie en Veiligheid: <https://www.justis.nl/producten/verklaring-omtrent-het-gedrag-vog>.

**179.** ECRIS, Justis Ministerie van Justitie en Veiligheid: <https://www.justis.nl/producten/verklaring-omtrent-het-gedrag-vog/beoordeling-besluit-en-bezwaar/ecris>.

**180.** "European Criminal Records Information System (ECRIS), Connecting national criminal databases centralised and decentralised information exchange," European Commission: [https://ec.europa.eu/info/law/cross-border-cases/judicial-cooperation/tools-judicial-cooperation/european-criminal-records-information-system-ecris\\_en](https://ec.europa.eu/info/law/cross-border-cases/judicial-cooperation/tools-judicial-cooperation/european-criminal-records-information-system-ecris_en).

**181.** "Internet Organised Crime Threat Assessment (IOCTA)," Europol, 2016: [https://www.europol.europa.eu/cms/sites/default/files/documents/europol\\_iocta\\_web\\_2016.pdf](https://www.europol.europa.eu/cms/sites/default/files/documents/europol_iocta_web_2016.pdf).

**182.** "Sexual Offences Act 2003," 86 Notification requirements: travel outside the United Kingdom: <https://www.legislation.gov.uk/ukpga/2003/42/part/2/crossheading/notification-requirements>.

allocation of enough human resource to monitor registered child sex offenders.<sup>183</sup>

In the case of Philippe G., the perpetrator was subject to the notification requirements of the French penal code provisions pertaining to the national child sex offender registers. As part of these requirements, he was obliged to declare his address every six months. While he complied with the requirements, he declared a change of address to a hotel in Katmandu, Nepal. However, due to an apparent lack of human resource to monitor registered child sex offenders and keep track of their activities, no actions were taken to prevent him from travelling abroad where he reoffended.<sup>184</sup>

In addition to restrictions on international travel, child sex offenders who are deemed dangerous may be deprived of their freedom of movement by removing their travel documents. For example, the Belgian consular code enables competent authorities to refuse or remove the individual's passport if their freedom of movement has been limited in order to prevent further criminal offences.<sup>185</sup>

In France, registered child sex offenders should declare their address once informed about their obligation and then every year; any change of address within 15 days; and every six months for child sex offenders with a punishment of ten years of imprisonment or every month for child sex offenders who are deemed dangerous and if such procedure is deemed necessary.<sup>186</sup> However, there is no provision to require child sex offenders to notify authorities of their intention to travel abroad. Moreover, there is no provision pertaining to restrictions on international travel or to deprive child sex offenders of their freedom of movement by removing their travel documents such as in Belgium.

In the United States, "registered sex offenders inform registry officials of any intended travel outside of the United States at least 21 days prior to the start of that travel" as per Title I of the Adam Walsh Child Protection and Safety Act of 2006, the Sex Offender Registration and Notification Act ("SORNA").<sup>187</sup> Additionally, according to Public Law 114 - 119 - International Megan's Law to Prevent Child Exploitation and Other Sexual Crimes Through Advanced Notification of Traveling Sex Offenders enacted in 2017, "the Secretary of State shall not

issue a passport to a covered sex offender unless the passport contains a unique identifier, and may revoke a passport previously issued without such an identifier of a covered sex offender."<sup>188</sup> The identifier is a passport endorsement, currently printed inside the back cover of the passport book, which reads: "The bearer was convicted of a sex offense against a minor, and is a covered sex offender pursuant to 22 United States Code Section 212b(c)(l)."<sup>189</sup> As a result, these provisions may prevent child sex offenders convicted for offences related to live online child sexual abuse to reoffend abroad. This is particularly relevant for perpetrators who targeted vulnerable individuals and children in foreign countries of the Global South. As stated hereabove, it is worth emphasizing that there is significant risk for child sex offenders who engage in this crime to travel abroad to commit sex-based crimes according to Europol.

<sup>183</sup>. "Hundreds of convicted sex offenders are missing, new figures show," *The Guardian*, March 10, 2015: <https://www.theguardian.com/society/2015/mar/10/hundreds-of-convicted-sex-offenders-are-missing-new-figures-show>.

<sup>184</sup>. "Pédophilie: procès demandé pour un Français accusé de récidive sous couvert d'humanitaire en Asie," *Le Temps*, May 23, 2020: <https://www.letemps.ch/monde/pedophilie-proces-demande-un-francais-accuse-recidive-couvert-dhumanitaire-asie>.

<sup>185</sup>. Law of 21 December 2013 on the Consular Code, *M.B.*, 21 January 2014 (art. 62): [https://www.ejustice.just.fgov.be/cgi\\_loi/change\\_lg\\_2.pl?language=fr&nm=2014A15009&la=F](https://www.ejustice.just.fgov.be/cgi_loi/change_lg_2.pl?language=fr&nm=2014A15009&la=F)

<sup>186</sup>. "Chapitre II : Du fichier judiciaire national automatisé des auteurs d'infractions sexuelles ou violentes (Articles 706-53-1 à 706-53-12)," *Légifrance*, Article 706-53-5: <https://www.legifrance.gouv.fr/codes/id/LEGISCTA000006151994/>.

<sup>187</sup>. "Notice of International Travel," *The Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART)*: <https://smart.ojp.gov/sorna/notice-international-travel>.

<sup>188</sup>. "U.S. Code," *Cornell Law School Legal Information Institute*, 22 U.S. Code § 212b - Unique passport identifiers for covered sex offenders: <https://www.law.cornell.edu/uscode/text/22/212b>.

<sup>189</sup>. "Passports and International Megan's Law," *U.S. Department of State Bureau of Consular Affairs*: <https://travel.state.gov/content/travel/en/passports/legal-matters/passports-and-international-megans-law.html>.

## Prohibited Occupations

In addition to imposing travel bans, it is important to take the additional prevention initiative consisting of preventing convicted child sex offenders from practicing a profession or activity that put them in regular contact with children. This provision should apply to paid and volunteer work, or any type of activity placing child sex offenders into a position of trust or authority. For example, in the case of Philippe G., this type of prevention initiative was apparently not taken due to the fact that after his first conviction he later founded an organization specifically helping children living in poverty, which put him in regular contact with children. While prohibiting child sex offenders from practicing higher-risk professions or activities may prevent them from reoffending, it is nonetheless challenging to ensure the enforcement of such provision. Some professions or activities, especially in the context of voluntary work, may lack formal procedures in the selection of individuals. In foreign countries with higher levels of poverty, voluntary work may be an urgent necessity which allows convicted child sex offenders to easily become valuable and influential actors among local communities. As a result, the combination of both travel bans and prohibited occupations may constitute an effective way for convicted child sex offenders to reoffend as well as to prevent them from practicing professions and activities involving children both domestically and internationally.

## Imposing Internet Bans

While imposing travel bans is necessary to avoid child sex offenders travelling in order to reoffend or to escape law enforcement and punitive requirements (e.g., notification, therapeutic requirements, etc.), it is also worth considering imposing internet bans in order to avoid child sex offenders reoffending online. In 2016, the Supreme Court of Canada enacted an internet ban provision for child sex offenders convicted of certain sex-based offences against a child victim under the age of 16 years.<sup>190</sup> These sex-based crimes include, for example: sexual interference (section 151), invitation to sexual

touching (section 152), luring a child (section 172.1), sexual assault (section 271), or trafficking of a person under the age of eighteen years (section 279.011).<sup>191</sup> The amendments to the Order of prohibition under Section 161(1) enable law enforcement practitioners to take the decision to prohibit convicted child sex offenders from having access to the internet upon their release. Furthermore, the amendments operate retrospectively, therefore, judges may decide to impose these restrictive measures to child sex offenders who were convicted before the amendments came into force. According to Section 161(1) of the Canadian Criminal Code, R.S.C. 1985, c. C-46, a child sex offender may be prohibited from:



(a) *attending a public park or public swimming area where persons under the age of 16 years are present or can reasonably be expected to be present, or a daycare centre, schoolground, playground or community centre;*

(a.1) *being within two kilometres, or any other distance specified in the order, of any dwelling-house where the victim identified in the order ordinarily resides or of any other place specified in the order;*

(b) *seeking, obtaining or continuing any employment, whether or not the employment is remunerated, or becoming or being a volunteer in a capacity, that involves being in a position of trust or authority towards persons under the age of 16 years;*

(c) *having any contact – including communicating by any means – with a person who is under the age of 16 years, unless the offender does so under the supervision of a person whom the court considers appropriate; or*

<sup>190</sup>. "R. v. K.R.J., Supreme Court Judgments," *Supreme Court of Canada*, July 21, 2016: <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16069/index.do>.

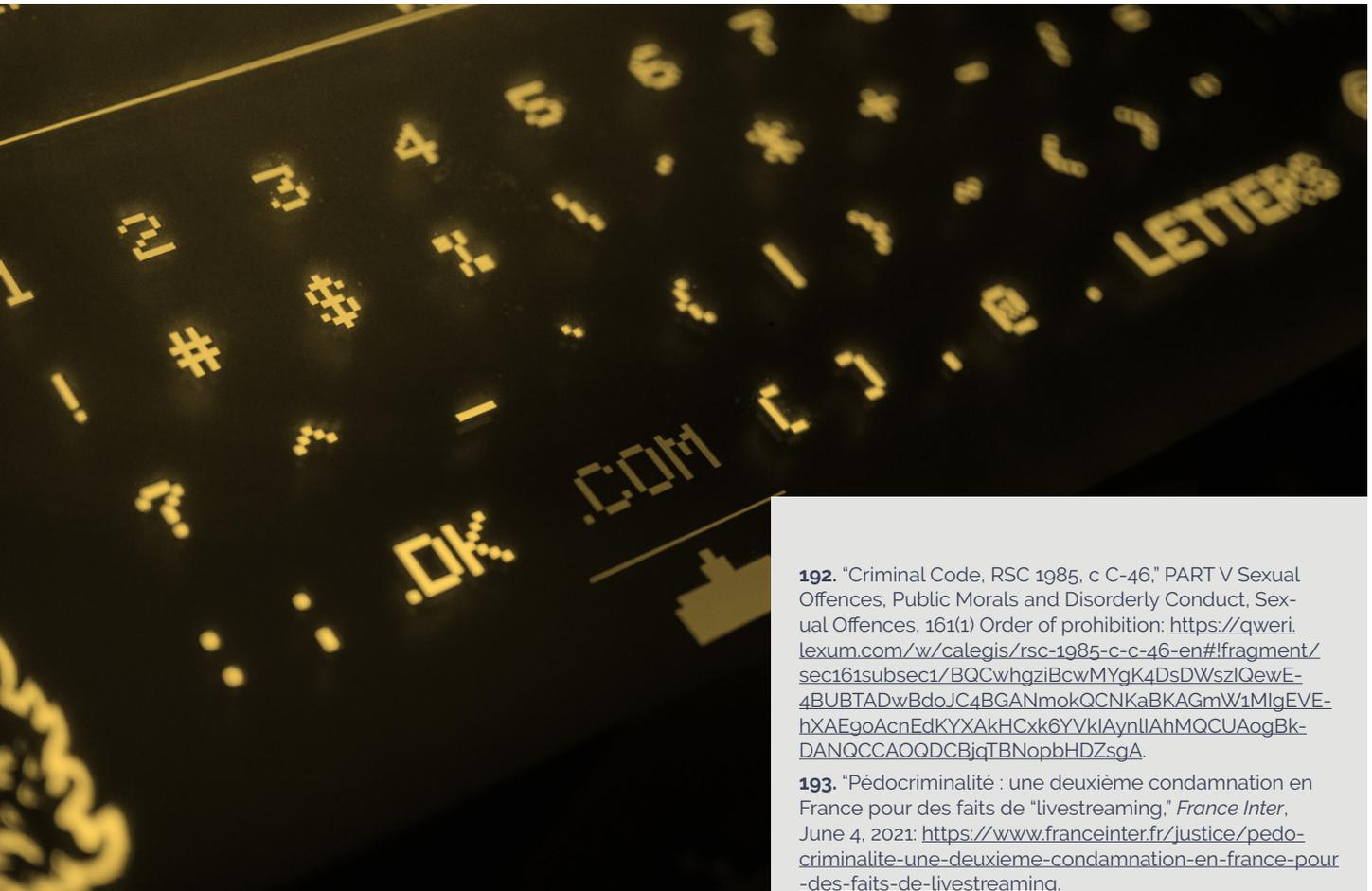
<sup>191</sup>. "Criminal Code, RSC 1985, c C-46," PART V Sexual Offences, Public Morals and Disorderly Conduct, Sexual Offences, 161(1.1) Offences: <https://qweri.lexum.com/w/calegis/rsc-1985-c-c-46-en/#fragment/sec161subsec1.1/BQCwhgziBcwMYgK4DsDWszlQewE-4BUBTADwBdoJC4BGANmokQCNKaA6agSgBplTCEAL-qJCuAJ7QA5FO6UwuBCLGSZcwgQOBIPKQBCKgEo-BRADLGAagEEAcgGFj3UmCbRS2OJo5A>.

*(d) using the Internet or other digital network, unless the offender does so in accordance with conditions set by the court.*<sup>192</sup>

This provision can be particularly relevant to child sex offenders convicted for offences pertaining to live online child sexual abuse since the internet and the use of ICTs enable them to sexually abuse child victims. As previously mentioned, live online child sexual abuse relies primarily on technology and perpetrators use it to target vulnerable child victims as well as to sexually abuse them. Furthermore, technology is at the heart of live online child sexual abuse regardless of whether it results from the solicitation or trafficking of children for sexual purposes. As a result, this provision appears to be a particularly effective measure to prevent perpetrators from reoffending upon release by prohibiting from engaging in a variety of everyday conduct such as the use of the internet. Additionally, this provision acknowledges the technological advancements which have changed the nature of child sexual abuse and exploitation, and the global social context in which sex-based crimes occur. Children

have never been more exposed to harm in such a hyperconnected world, while perpetrators have been given unprecedented access to vulnerable child victims from virtually anywhere in the world.

In France, a child sex offender was convicted for CSAM-related offences related to the possession and dissemination of eight million files including four million images and four million videos between 2001 and 2016, which greatly contributed to Interpol's ICSE database and helped law enforcement identify 150 child victims. However, the child sex offender was also arrested in 2019 for offences related to live online child sexual abuse. The law enforcement investigation revealed that he possessed four million images and videos and had been involved in live online child sexual abuse for ten years. This case strongly highlights the escalating path in terms of offending and the importance of internet bans to prevent child sex offenders who committed crimes against children online from using the internet. In France, it is estimated that at least 300 child sex offenders are involved in live online child sexual abuse.<sup>193</sup>



**192.** "Criminal Code, RSC 1985, c C-46," PART V Sexual Offences, Public Morals and Disorderly Conduct, Sexual Offences, 161(1) Order of prohibition: <https://qweri.lexum.com/w/calegis/rsc-1985-c-c-46-en#!fragment/sec161subsec1/BQCwhgzlBcwMYgK4DsDWszlQewE-4BUBTADwBdoJC4BGANmokQCNKaBKAGmW1MlgEVE-hXAEgoAcnEdKYXAkHCxk6YVkiAynlAhMQCUAogBk-DANQCCAOQDCBjqTBNopbHDZsgA>.

**193.** "Pédocriminalité : une deuxième condamnation en France pour des faits de "livestreaming," *France Inter*, June 4, 2021: <https://www.franceinter.fr/justice/pedo-criminalite-une-deuxieme-condamnation-en-france-pour-des-faits-de-livestreaming>.

# MEASURES FOR LAW ENFORCEMENT PRACTITIONERS

## Creating a Scaling System of Child Sexual Abuse

It is important to consider aggravating factors upon sentencing, especially those pertaining to the nature of the offences and the severity of the acts committed in the context of live online child sexual abuse. The creation of a scaling system similar to the one developed by the Sentencing Council<sup>194</sup> in order to assess and categorize CSAM in the form of images may enable law enforcement practitioners to effectively assess and categorize offences committed in the context of live online child sexual abuse. Furthermore, it may assist judges to impose sentences proportionate to the actual harm caused to child victims. This scaling system categorizes CSAM into three categories: images involving penetrative sexual activity and images involving sexual activity with an animal or sadism (category A); images involving non-penetrative sexual activity (category B); and other indecent images not falling within categories A or B (category C). This scaling system also helps to determine the level of culpability based on the production, distribution or possession of such images. The creation of a similar scaling system adapted to live online child sexual abuse or that would encompass all forms of CSAM could enable judges to take a consistent approach to sentencing. Additionally, a comprehensive scaling system could enable law enforcement practitioners to assess and categorize the acts committed in the context of live online child sexual abuse even in the absence of captured images and videos, for example via chat logs, payments, etc.

## Designing Sentencing Guidelines

It is also worth considering the creation of sentencing guidelines similar to the Sentencing Council's Sexual Offences Definitive Guideline<sup>195</sup>, which may provide guidance on factors judges should consider upon sentencing. The Sexual Offences Definitive Guideline sets out different levels of sentence based on the harm caused to victims and the offenders' culpability. Each sexual offence is split into different categories which reflect varying degrees of seriousness and contain sentences appropriate for each level of seriousness as well as lists of aggravating and mitigating factors that may affect sentences.

<sup>194</sup>. "Sexual Offences Definitive Guideline," *Sentencing Council*: <https://www.sentencingcouncil.org.uk/wp-content/uploads/Sexual-offences-definitive-guideline-Web.pdf>.

<sup>195</sup>. *Idem*.

## Considering Aggravating Factors while Sentencing

According to the Budapest Convention, Member States "shall take the necessary legislative or other measures to ensure that the following circumstances [...] be taken into consideration as aggravating circumstances."<sup>196</sup>

- a. The offence seriously damaged the physical or mental health of the victim;
- b. The offence was preceded or accompanied by acts of torture or serious violence;
- c. The offence was committed against a particularly vulnerable victim;
- d. The offence was committed by a member of the family, a person cohabiting with the child or a person having abused his or her authority;
- e. The offence was committed by several people acting together;
- f. The offence was committed within the framework of a criminal organisation;
- g. The perpetrator has previously been convicted of offences of the same nature.

Although this is a non-exhaustive list, the following additional aggravating factors should also be considered upon sentencing in the context of live online child sexual abuse. Additionally, the following aggravating factors may serve as the basis for creating a scaling system and sentencing guidelines (see next page)



<sup>196</sup>. "Convention on Cybercrime, Article 28 – Aggravating circumstances," *Council of Europe*: <https://www.coe.int/en/web/cybercrime/the-budapest-convention>.

| <b>CHILD SEX OFFENDERS,<br/>TRAFFICKERS/FACILITATORS</b>  | <b>CHILD VICTIMS</b>  |
|---|---|
| Previous convictions for sex-based crimes against children and the time that has elapsed since these previous convictions             | Presence of multiple or a large number of different child victims (either during single livestreaming sessions and/or throughout the time the perpetrator has been sexually abusing children) |
| Sex-based crimes against children committed while being on bail   | Pregnancy or STI as a consequence of the sexual abuse involving penetrative sexual activity   |
| Specific targeting of particularly vulnerable child victims   | Child victims encouraged or coerced to recruit others, or to sexually engage with other children  |
| Solicitation of children for sexual purposes including grooming for sexual purposes and the sexual extortion of children              | Severe psychological or physical harm caused to child victims   |
| Use of anonymizing tools in order to commit sex-based crimes against children (e.g., TOR, proxy servers, etc.)                        | Child victims compelled to leave their home, school, being food withheld or punished, etc.  |
| Attempts to dispose of or conceal evidence  | Child victims depicted intoxicated or drugged   |
| Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution | Age and/or vulnerability of the child victims depicted  |
| Period over which offences are committed  | Discernable pain or distress suffered by child victims depicted   |
| Period over which live sessions were produced/transmitted, viewed and captured  | Child victims depicted known to child sex offenders   |
| High volume of live sessions produced/transmitted, viewed and captured  | Child victims prevented from seeking medical treatment  |
| Producing/transmitting live sessions where there is the potential for a high volume of child sex offenders                            | Deliberate isolation of child victims   |
| Child sex offenders' CSAM collections include videos  | Child victims of any other forms of sexual or non-sexual abuse and/or exploitation  |
| Abuse of trust  |   |
| Active involvement in a network or process that facilitates, or commissions live online child sexual abuse offences                   |   |
| Commercial exploitation and/or motivation   |   |
| Deliberate or systematic searching for engaging in live online child sexual abuse   |   |
| Exploitation of child victims from particularly vulnerable backgrounds  |   |
| Payment(s) conducted to engage in live online child sexual abuse  |   |
| Discussion(s) to arrange acts of sexual abuse with trafficker and/or facilitators   |   |
| Use of any forms of coercion, violence, threats, manipulation or blackmail  |   |

# PSYCHOLOGICAL EFFECTS OF LIVE ONLINE CHILD SEXUAL ABUSE

The psychological effects on child victims involved in live online child sexual abuse may be significant as it involves multiple remote child sex offenders to view and/or request/direct the sexual abuse committed against child victims. This distance may result in more severe sexual abuse given that it may desensitize perpetrators, in other words some child sex offenders may commit or request acts which they would not carry out in a situation of offline child sexual abuse (at least initially). Additionally, the fact that the perpetrators may request the acts to be carried out via a third person removes the sense of guilt and involvement in the crime. This element enables child sex offenders to actively participate in the sexual abuse of children in real time and to act out their sexual fantasies, which increases the level of physical and psychological harm caused to child victims. In contrast to child victims of rape or sexual assault, the sexual abuse committed in real time online may be even more severe given that child victims may be exposed simultaneously to the requests of multiple child sex offenders, which is a form of abuse that can be compared to group rape where each perpetrator takes an active part in the sexual abuse of the victim and has the possibility to act out their personal sexual fantasies. In the context of live online child sexual abuse, child victims may be victimized by one or more perpetrators or their own peers who are physically present and carry out the sexual acts requested or directed; or by one or more remote child sex offenders either directly or indirectly via a third person: i.e., a trafficker/facilitator also being a perpetrator of sex-based crimes against children.

Child victims involved in live online child sexual abuse in the context of family-run operations may be under the influence of their parents, who may downplay the children's involvement in such activity by removing the feeling of shame they may experience and by considering that this is not as harmful as being involved in the exploitation of children in/for prostitution. The parents may ask the child victims to keep their activity secret and that such activity is necessary and their duty to earn money for basic expenses such as food or to be able to pay bills and education fees. In this regard, children of a younger age may feel particularly responsible. While the parents are guilty of victimizing their own children, these may not consider themselves as being victimized. Children may realize they had been victimized by their parents once they are rescued and debriefed about it. In this regard, child victims may be extremely confused as a result of the conflicting feelings towards their parents who are supposed to take care of them but who instead sexually exploited and abused them. Child victims may also feel distressed when their parents are arrested as a result of their involvement in such activity, which places child victims into a difficult situation between being loyal to their parents in spite of the sexual exploitation and abuse they experienced or to collaborate with law enforcement in pursuit of justice and what they may perceive as what is right. As a consequence of the arrest and imprisonment of their parents, child victims may feel extremely guilty, and their life may be completely disrupted. Child victims may also start feeling ashamed about what they have done, especially when becoming aware of the sexual content that may have been produced and captured as a result of the crime.

Live online child sexual abuse is an additional source of production of CSAM. The SGSC produced in this context and its distribution can cause serious psychological harm to children and result in revictimization. There is a tendency of victim-

blaming both from children themselves as well as caregivers according to a survey conducted by Thorn, which revealed that more than half of children (60%) and caregivers (55%) blame the victim when SGSC is reshared.<sup>197</sup> In addition, child victims may feel ashamed as it can be difficult for them to speak out about issues related to sexual abuse and some may fear they would be blamed for what had happened to them. As the NSPCC points out, "Online sexual abuse is never the victim's fault and it's important that children are able to get the right support when they need it, without fear of being judged or punished."<sup>198</sup> It is therefore important not to blame child victims for the abuse and exploitation that may result from the distribution of SGSC against their will. Additionally, this attitude may prevent children from coming forward and undermine disclosure as well as reporting. In the context of live online child sexual abuse, the contact or non-contact sexual abuse occurring during livestreaming sessions constitutes the first layer of harm caused to child

victims. The distribution of SGSC constitutes the second layer of harm caused to child victims. Child victims may suffer from the secondary trauma of being aware that child sex offenders possess this material and/or that they have shared or posted it online. In this regard, the United Nations Office on Drugs and Crime ("UNODC") points out that "each subsequent viewing or distribution of that material serves to re-victimize and thus further exacerbate the psychological damage to the abused."<sup>199</sup>

As regards the psychological effect of live online child sexual abuse, it is worth mentioning a study conducted by Terre des Hommes in which the emotional and psychosocial consequences on children involved in live online child sexual abuse were assessed. One of the main findings of this study was that children were not only involved in one form of sexual exploitation and abuse but may also be involved in other forms of sexual exploitation and abuse such as the exploitation of children in/for prostitution.



**197.** "Self-Generated Child Sexual Abuse Material: Attitudes and Experiences," *Thorn*, August 2020: <https://www.thorn.org/self-generated-child-sexual-abuse-material-attitudes-and-experiences/>.

**198.** "The impact of the coronavirus pandemic on child welfare: online abuse," *NSPCC Learning*, 2020: <https://learning.nspcc.org.uk/research-resources/2020/coronavirus-insight-briefing-online-abuse>.

**199.** "Study on the Effects of New Information Technologies on the Abuse and Exploitation of Children," *United Nations Office on Drugs and Crime*, 2015: [https://www.unodc.org/documents/Cybercrime/Study\\_on\\_the\\_Effects.pdf](https://www.unodc.org/documents/Cybercrime/Study_on_the_Effects.pdf).

# PROTECTING AND EMPOWERING CHILD VICTIMS

## Raising and Harmonizing the Age of Sexual Consent

The legal age of sexual consent varies from country to country and constitutes an obstacle to the consistent and harmonized protection of children from sexual abuse and exploitation, especially at the international level since live online child sexual abuse is primarily a transnational phenomenon. Moreover, when “dual criminality” is required in the context of extraterritorial cases<sup>200</sup>, agreement on a common definition of what who is a child and what is the age of sexual consent age is crucial. Furthermore, despite that a minor may be able to freely give consent to engage in sexual activity, they are not able to give consent to any form of sexual exploitation, which is an important aspect of live online child sexual abuse, especially in supplying countries of the Global South. Any discrepancy could prevent child sex offenders from being prosecuted, therefore, it is important to raise and harmonize the age of sexual consent.

At the European level, the Directive 2011/93/EU states that the “age of sexual consent means the age below which, in accordance with national law, it is prohibited to engage in sexual activities with a child”. Instead of harmonizing the member states’ national legislations in accordance with its definition, the Directive confers discretion upon the member states to define the legal age of sexual consent in accordance with their own national

legislation.<sup>201</sup> As a result, the Directive leaves in the discretion of the Member States whether to criminalize or not the production and possession of sexual material by children above the age of sexual consent as long as the material is for private use and resulted from a consensual sexual relationship. This eliminates discrepancies that could arise from the varying age of sexual consent in countries and the definition of a minor who is considered as any individual under the age of 18 years. Furthermore, it prevents children from being guilty of producing and possessing such material on the same basis of the factors stated hereabove.

According to the Budapest Convention, “the term ‘minor’ shall include all persons under 18 years of age. A Party may, however, require a lower age-limit, which shall be not less than 16 years.”<sup>202</sup> However, the age of sexual consent is below the age of 16 years old in 26 countries in Europe: the age of sexual consent is 14 years old in the following countries: Albania, Austria, Bosnia and Herzegovina, Bulgaria, Estonia, Germany, Hungary, Italy, Liechtenstein, North Macedonia, Montenegro, Portugal, San Marino and Serbia; the age of sexual consent is 15 years old in the following countries: Croatia, Czech Republic, Denmark, France, Greece, Iceland, Monaco, Poland, Romania, Slovakia, Slovenia and Sweden. All of these countries are parties of the Budapest Convention and should therefore transpose the provisions of the Budapest Convention on the age of sexual consent into their national legislation.

**200.** A crime committed abroad must also be a crime in the offender’s country in order for the offender to be prosecuted in their home country.

**201.** “Directive 2011/93/EU,” Article 8, Consensual sexual activities.

**202.** “Convention on Cybercrime, Article 9 Offences related to child pornography (3),” *Council of Europe*: <https://www.coe.int/en/web/cybercrime/the-budapest-convention>.

Sex-based crimes against children are categorized within the following articles of the Directive: Article 3 Offences concerning sexual abuse; Article 4 Offences concerning sexual exploitation; Article 5 Offences concerning child pornography; and Article 6 Solicitation of children for sexual purposes. It is worth pointing out that for the offences listed in Article 3 and Article 4, the term of imprisonment varies depending on whether the child victim has reached or not the legal age of sexual consent. When the child victim has reached the legal age of sexual consent, the term of imprisonment is approximately divided by half even though there is use of coercion, force or threats. This implies that the sexual abuse perpetrated by child sex offenders is less harmful to children who have reached the legal age of sexual consent. In addition, child sex offenders who may be familiar with such legislation may adopt the strategy of sexually abusing children who have reached the legal age of sexual consent in order to escape more severe punishments in case they would get caught by law enforcement.

In a study conducted by the Australian Institute of Criminology<sup>203</sup>, most of the child sex offenders requested that a session of livestreaming of child sexual abuse involve a child victim of a specific age. The age of child victims ranged from seven to 17 years and the average age of child victims was 14 years. The following excerpt of an online discussion between a child sex offender and a facilitator and/or victim located in the Philippines strongly suggests that the child sex offender may be aware of the legal age of sexual consent in the Philippines and take advantage of the law:



*Facilitator: how much u send now for young [children] show*

*Offender: i want to see there faces first....and not under 12...ok..??*

*Facilitator: ok how much u send*

*Offender: 1000..... [Philippine pesos]*

*[Offender agrees to view two victims aged 12 and 13 years]*

*ok...sent....[provides transaction number] ..... amount is 1000...from [offender's name] from Australia you should get an sms soon*

*Facilitator: ok*

In another study conducted by the Australian Institute of Criminology, a case analyzed the negotiations taking place between child sex offenders and traffickers or facilitators. These negotiations can be based around the specific ages of child victims that perpetrators were either requesting or being offered for the sexual abuse. In this regard, in case 7 of the study, "a facilitator told the offender that there were seven different girls available, aged between seven and 16 years. The offender replied: 'can i see there faces..?? 12 and above'"<sup>204</sup> which also shows that perpetrators may be aware of the legal age of sexual consent in the countries where they target child victims and take advantage of the law.

The legal age of sexual consent in the Philippines has been among the lowest in Asia and in the world, making children in the Philippines particularly vulnerable to sexual abuse and exploitation. According to Republic Act 8353 (also known as "The Anti-Rape Law of 1997")<sup>205</sup>, rape is committed when a male individual has sexually engaged with a female individual via sexual penetration and "When the offended party is under twelve (12) years of age or is demented" regardless of the circumstances. However, it is worth mentioning that the vote of a Senate Bill raised the legal age of sexual consent and amended the age of statutory rape from 12 to 16 years and abolishes the distinction in terms of gender, equalizing the protection for child victims of rape regardless of their gender.<sup>206</sup>

In Asia, the lowest age for sexual consent is in Japan (13 years of age)<sup>207</sup>, followed by Bangladesh, China

**203.** Napier S, Teunissen C & Boxall H 2021. "Live streaming of child sexual abuse: An analysis of offender chat logs." Trends & issues in crime and criminal justice no. 639. Canberra: Australian Institute of Criminology. <https://doi.org/10.52922/ti78375>.

**204.** Napier S, Teunissen C & Boxall H 2021. How do child sexual abuse live streaming offenders access victims?. Trends & issues in crime and criminal justice no. 642. Canberra: Australian Institute of Criminology. <https://doi.org/10.52922/ti78474>.

**205.** "Republic Act 8353: The Anti-Rape Law of 1997," Republic of the Philippines, Philippine Commission on Women: <https://pcw.gov.ph/republic-act-8353-the-anti-rape-law-of-1997/>.

**206.** "Gordon welcomes passage of law increasing age of sexual consent in PH," Senate of the Philippines, 18th Congress, September 27, 2021: [http://legacy.senate.gov.ph/press\\_release/2022/0307\\_gordon1.asp](http://legacy.senate.gov.ph/press_release/2022/0307_gordon1.asp).

**207.** However, local prefecture statutes in most areas of the country raise the effective age to 16-18 years of age.

and Myanmar where the age of sexual consent is 14 years of age; and Cambodia, Laos and Thailand where the age of sexual consent is 15 years of age. The lowest age of sexual consent in the world is 11 years of age, in Nigeria, followed by Angola (12); and Burkina Faso, Comoros, Niger where the age of sexual consent in the world is 13 years of age. Additionally, in multiple Middle Eastern and African countries, there is no legal age of sexual consent, which ban all sexual relations outside of marriage. The countries with marriage-based ages of consent include Afghanistan, Iran, Kuwait, Libya, Maldives, Oman, Pakistan, Qatar, Saudi Arabia, Sudan, United Arab Emirates and Yemen.<sup>208</sup>

## Awareness and Prevention

While there are various initiatives led by national awareness centers and civil society to educate children, parents and other key stakeholders about the risks associated with self-generated sexual content/material in the context of "sexting", there is a lack of awareness among children and parents about the risks associated with live online interactions and the potential for permanent footage to be created as well as distributed outside of children's control. The fact that IWF's study found that a quarter of children were assessed as being 10 years old or younger shows that awareness-raising initiatives are crucial in order to mitigate the risk of live online child sexual abuse and the solicitation of children for sexual purposes. It is therefore important that national awareness centers and civil society focus on raising awareness and understanding of the risks associated to live online interactions as well as to provide guidance on social media, gaming and video-based platforms or applications. This is particularly important in order to empower children, parents and other key stakeholders with the necessary knowledge to enable children to stay safe online and to enable them to take advantage of the opportunities that these technologies provide. In this regard, SICs co-operate and exchange resources and best practices at the European level through the portal [betterinternetforkids.eu](https://www.betterinternetforkids.eu) in order to foster child online safety.<sup>209</sup> The SICs are composed of a national awareness center organized

by the Insafe network<sup>210</sup>, a helpline, also organized by Insafe, and a hotline organized through INHOPE.<sup>211</sup> It is worth mentioning that SICs also rely on advice of young people through youth panels. The national awareness centers are responsible for raising awareness of online safety and of potential risks that young people may encounter online, observing emerging trends, running campaigns and developing information material for parents, children and teachers, organizing information sessions and events, and working towards empowering children, young people, parents, caregivers and teachers.

While such initiatives would increase media literacy and improve online safety, it is also necessary to educate children, parents and other key stakeholders on live online child sexual abuse beyond the issues related to "sexting" and the exchange of sexual material, especially since this is now an established reality. The fact that IWF identified CSAM depicting particularly younger children from the Global North alone in a home setting and potentially resulting from the solicitation of children for sexual purposes shows that the public is apparently unaware of the existence of this phenomenon. However, this lack of awareness does not mean that this issue does not exist, on the contrary, it allows this phenomenon to occur in relative secrecy. This is also true for live online child sexual abuse resulting from the trafficking of children for sexual purposes mainly occurring in the Global South, where child sex offenders from the Global North sexually abuse or request and order the sexual abuse of children in real time through the use of ICTs. As a result, it is important that the public must be aware that live online child sexual abuse has become a widespread crime both in the Global North and Global South and that the sexual abuse of children is real even though it occurs within the online environment. Live Online Child Sexual Abuse is as harmful as other sex-based crimes against children and the psychological consequences resulting from these acts may be significant and last for a lifetime.

<sup>208</sup>. "Legal Ages of Consent By Country," *AgeOfConsent.net*: <https://www.ageofconsent.net/world>.

<sup>209</sup>. Better Internet for Kids: <https://www.betterinternetforkids.eu/>.

<sup>210</sup>. Insafe and INHOPE, *Better Internet for Kids*: <https://www.betterinternetforkids.eu/web/portal/policy/insafe-inhope>.

<sup>211</sup>. International Association of Internet Hotlines: <https://www.inhope.org/EN>.

## Victim Notification System

The further distribution of this material prevents closure even when child sex offenders are arrested and sentenced. The CSAM and SGSC involving the victimization of a child may be the basis of multiple subsequent criminal investigations and court proceedings. Some child victims may have the opportunity to opt in for being notified each time this material appear in these criminal investigations and court proceedings. In the United States, the Child Pornography Victim Assistance (CPVA) Program is responsible for the notification process for victims of child sexual abuse and exploitation.<sup>212</sup> At the initiation of an investigation, child victims and/or caregivers are contacted by a victim specialist who, in addition to providing referrals for services, explains the unique circumstances surrounding child sexual abuse/exploitation investigations, and the possibility that the material may appear again in future criminal investigations or court proceedings. The victim specialist also requests the victim and/or caregiver sign a Notification Preference Form. The FBI's Office for Victim Assistance (OVA) maintains these forms once completed. The victims and/or caregivers who indicate a preference for notification are entered into the U.S. Department of Justice Victim Notification System (VNS) to ensure they receive subsequent notifications on court proceedings and defendant custody status in each individual case. Nevertheless, as the FBI points out, "the amount and frequency of notifications can be overwhelming, especially as victims may have difficulty coping with the impact of the crime and its ongoing aftermath."<sup>213</sup> In this regard, child victims may experience further harm as long as the material that depicts them is distributed and recirculate online. However, child victims have the choice whether they want to opt in or out of this notification system. This is critical for child victims to have the choice and opportunity to opt out in order to avoid exacerbating the psychological damage caused by the initial sexual abuse.<sup>214</sup>

## Victim Impact Statement ("VIS")

Child victims may also indicate on their Notification Preference Form whether they would like to provide a Victim Impact Statement ("VIS") that may be used in federal, state, and/or local sentencings or parole proceedings where the defendant's offences involved material of the victimization. Child victims have the opportunity to provide a written impact statement or personal letter as well as to give an oral statement. They also have the opportunity to provide both a written and oral impact statement at sentencing. This practice enables the Court to better understand the impact this crime has had on child victims before they sentence an individual. It may also assist judges to decide what sentence child sex offenders should receive even though decisions are primarily based on pre-sentence reports and some sentencing guidelines. Nevertheless, it enables judges to consider child victims' voice, who can describe the emotional, physical, and financial impact they have suffered as a direct result of the crime. As regard the financial impact, victim impact statements include a financial loss statement allowing judges to determine the amount of money child sex offenders may have to pay to child victims because of the crime. This practice is referred to as "restitution".<sup>215</sup>

It is worth recalling that the harm caused to child victims in the context of live online child sexual abuse is no less than that resulting from physical sexual abuse even though there is no physical

**212.** See "U.S. Code," *Cornell Law School Legal Information Institute*, 34 U.S. Code § 20141 - Services to victims: <https://www.law.cornell.edu/uscode/text/34/20141>; and "U.S. Code," *Cornell Law School Legal Information Institute*, 18 U.S. Code § 3771 - Crime victims' rights: <https://www.law.cornell.edu/uscode/text/18/3771>.

**213.** "Child Pornography Victim Assistance (CPVA)," *Federal Bureau of Investigations*: <https://www.fbi.gov/resources/victim-services/cpva>.

**214.** "Global Threat Assessment 2021," *WeProtect Global Alliance*, p. 52.

**215.** "Victim Impact Statements," *The United States Department of Justice*: <https://www.justice.gov/criminal-vns/victim-impact-statements> <https://www.justice.gov/usao/resources/crime-victims-rights-ombudsman/victims-rights-act>.

contact with child sex offenders. It is therefore important to incorporate child victims' voice in court proceedings in order to level the playing field between child sex offenders and child victims as well as to allow judges to adequately appreciate the harm caused to them. It enables child victims to be humanized and to share their experience and individual circumstances with judges, which may sentence differently on the basis on these statements. This is crucial to see child victims and to hear their voice in the context of live online child sexual, because the lack of their point of view may result in a lack understanding of the actual harm caused to children. While it may be challenging to obtain victim impact statements from child victims located in foreign jurisdictions, law enforcement practitioners may collaborate with relevant organizations. For example, the International Justice Mission ("IJM") stated that it "helped foreign law enforcement in other jurisdictions record interviews of Philippine victims for demand-side trials. Should a case resolve though plea without the opportunity to show the interview, the recording should still be shown at sentencing if it contains relevant disclosures."<sup>216</sup> In addition to the challenge of obtaining victim impact statements from child victims located in foreign jurisdictions, it can also be challenging to identify child victims, especially when they are located in foreign jurisdictions and have been one-off victims (appearing only once in CSAM resulting from live online child sexual abuse).

The Council of Europe Convention on Protection of Children against Sexual Exploitation and Sexual Abuse, also known as "the Lanzarote Convention", establishes programs to support child victims as per Article 36 – Criminal court proceedings.<sup>217</sup>



(1) Each Party shall take the necessary legislative or other measures, with due respect for the rules governing the

autonomy of legal professions, to ensure that training on children's rights and sexual exploitation and sexual abuse of children is available for the benefit of all persons involved in the proceedings, in particular judges, prosecutors and lawyers.

(2) Each Party shall take the necessary legislative or other measures to ensure,

according to the rules provided by its internal law, that:

- (a) the judge may order the hearing to take place without the presence of the public;
- (b) the victim may be heard in the courtroom without being present, notably through the use of appropriate communication technologies.

## Proxy Victim Impact Statement

In Canada, a victim impact statement can be provided by the direct victim as well as a person who is affected by the crime committed against the victim. In this regard, it is possible to provide a victim impact statement via someone acting on the victim's behalf such as the survivors of deceased victims, the parents or guardians of child victims, or the relatives of child victims who may be incapable of making a statement. The Court can also choose to allow the victim to present the victim impact statement in another way, such as a pre-recorded video. They also have the opportunity to ask to read their statement: while a support person they have chosen is nearby; while they are behind a screen; or outside the courtroom by closed-circuit television so that they do not have to see the offender. It is worth mentioning that victims may also include a drawing, poem or letter to express how the offence has affected them. Additionally, victims or someone acting on the victim's behalf can bring a photograph of the victim taken before the offence while they present their statement.<sup>218</sup>

<sup>216</sup>. "Falling Short," *International Justice Mission*, p. 40.

<sup>217</sup>. "Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201)," *Council of Europe*: <https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treaty-num=201>.

<sup>218</sup>. "Victim impact statements," *Government of Canada*: <https://www.justice.gc.ca/eng/cj-jp/victims-victimes/sentencing-peine/vis-dv.html>.

## Professional Reports

It is important to consider obtaining professional reports on child victims' circumstances during court proceedings, especially if a child victim or someone acting on their behalf is unable to provide a victim impact statement or when a child victim is too young or is subject to revictimization and secondary trauma. Upon rescue, child victims may receive psychological and medical treatments as well as assessments by medical practitioners, social workers or other care providers. In contrast to the subjective view provided by victim impact statements, professional reports may provide an objective view on the physical and psychological harm caused to child victims during court proceedings. As a result, law enforcement practitioners should inquire about the existence of such professional reports to the relevant organizations.

## Showing digital evidence

In the United Kingdom, IJM pointed out that "to mitigate re-exploitation of victims and preserve the mental health of the courts, UK judges are not required to view digital evidence at sentencing. Instead, judges are given a description of the evidence based on CAID categorization (categories A, B and C)."<sup>219</sup> While this is important to avoid the revictimization of child victims and ensure the well-beings of all individuals present in court proceedings, the fact of not viewing digital evidence may result in the phenomenon of live online child sexual abuse being underestimated and the harm cause to children being inadequately appreciated. In Sweden, a selection of the material is shown during criminal proceedings.

## Financial Compensation

In addition to sentencing child sex offenders, it is important to obtain financial compensation for the physical and moral damages caused to child victims. The restitution may be critical for child victims to rebuild themselves and pay for their therapy as well as educational or medical needs.



*The painful outcome for children who have been repeatedly raped and sexually exploited is unpaid bills for therapy and few resources to help them live with dignity. Without criminal restitution, many victims must rely on taxpayer-funded public assistance while wealthy defendants serve a few years in a minimum security taxpayer-funded prison and return to a life of relative comfort and privilege.<sup>220</sup>*

In the context of live online child sexual abuse, children may suffer from serious harm due to the contact or non-contact sexual abuse as well as from the revictimization and secondary trauma resulting from the capture of the livestreamed material which may circulate indefinitely online. In this regard, ECPAT pointed out that "the fact that a permanent record exists of the child's abuse in OCSE cases impacts the recovery and reintegration process and may increase the need for long-term psychological counselling and social services."<sup>221</sup>

<sup>219</sup> "Falling Short." *International Justice Mission*, p. 41. CAID stands for "Child Abuse Image Database" and categorizes CSAM as follows: Category A material is the most serious, involving penetrative, sadistic or bestiality acts on a child; Category B involves non-penetrative sexual activity; and Category C materials are indecent images that fall in neither Category A nor B (see p. 19).

<sup>220</sup> "Child Pornography Victims Ignored and Forgotten in the Halls of Congress." *Child Pornography Victims Deserve Justice*, February 11, 2016: [https://childvictims.us/child-pornography-victims-ignored-and-forgotten-in-the-halls-of-congress/?utm\\_source=rss&utm\\_medium=rss&utm\\_campaign=child-pornography-victims-ignored-and-forgotten-in-the-halls-of-congress#.WPNxkogrLIU](https://childvictims.us/child-pornography-victims-ignored-and-forgotten-in-the-halls-of-congress/?utm_source=rss&utm_medium=rss&utm_campaign=child-pornography-victims-ignored-and-forgotten-in-the-halls-of-congress#.WPNxkogrLIU).

<sup>221</sup> "Summary Paper: Online Child Sexual Exploitation," *ECPAT International*, 2020: <https://ecpat.org/resource/summary-paper-online-child-sexual-exploitation/>.

Child victims are not necessarily aware of their right to financial compensation as well as they may not even know the identity of perpetrators and be aware of being victims. Furthermore, child victims from foreign jurisdictions who are particularly vulnerable are often poorly recognized and rarely seek for financial compensation. Law enforcement practitioners should therefore proactively explore all the available options in order to collaborate with the relevant entities, whether they are in foreign jurisdictions or not, to obtain financial compensation for child victims of live online child sexual abuse.

Organizations from civil society may bring civil actions on behalf of child victims in order to obtain financial compensation. For example, IJM stated that it “has supported US demand-side criminal cases resulting in monetary restitution for survivors. In the case of *United States v Sara*, the defendant pled guilty to attempted coercion and enticement of a minor, including viewing livestreams depicting minors engaged in sexually explicit conduct. He was sentenced to 14-years imprisonment and ordered to pay \$8,000 USD to the two victims – \$4,000 USD each. The FBI requested IJM to send estimations of restitution by considering medical expenses, lost income, counselling, and logistical expenses.”<sup>222</sup>

### FINANCIAL COMPENSATION PROCESS

Financial compensation may be claimed via criminal courts, civil courts and via state-managed compensation programs. Usually, child victims have the opportunity to claim financial compensation as part of criminal proceedings. In this regard, child victims must proactively bring legal actions by becoming a civil party in the criminal proceedings. At the European level, a directive establishing minimum standards on the rights, support and protection of victims of crime states that Member States should “ensure that, in the course of criminal proceedings, victims are entitled to obtain a decision on compensation by the offender, within a reasonable time, except where national law provides for such a decision to be made in other legal proceedings”.<sup>223</sup> By contrast, child victims may bring a separate lawsuit against perpetrators separately from criminal proceedings. In this regard, child victims must provide evidence supporting the harm caused by perpetrators. It is worth mentioning that child victims can also use the perpetrators criminal conviction as evidence. The perpetrators may not always be solvable and

child victims may not obtain adequate restitution through criminal or civil proceedings. Additionally, the procedures may extend over significant periods of time (e.g., several years) and children may suffer from re-traumatization. As a result, child victims may claim financial compensation via state-managed compensation programs, which provide a more informal and less traumatic way to obtain restitution. Nevertheless, as outlined below, regardless of the methods available to claim financial compensation there are some obstacles preventing child victims from obtaining restitution.

### CHALLENGES IN OBTAINING FINANCIAL COMPENSATION

Financial compensation is a crucial part in the process of victim recognition, however, ECPAT has identified eight types of barriers to financial compensation for child victims: (1) the lack of notice and information about child victims' rights; (2) insufficient legal assistance to support child victims; (3) difficulties in securing compensation from state funds (e.g., state funds are not adapted to SEC victims, reliance on the criminal justice process and risk of re-traumatization); (4) hardship in the compensation seeking process (e.g., multiplication of investigations, having to prove damages, length of the process and uncertain outcome); (5) misperceptions of child victims; (6) the complexity of transnational cases (e.g., when offences are committed out of country, requirements that claimants be lawful residents); (7) prescription periods, statutes of limitations and other time restrictions and other time requirements; (8) difficulties in accessing payment of monetary awards (e.g., compensation amounts are too low, court compensation orders too often not enforced,

<sup>222</sup>. “Falling Short,” *International Justice Mission*, p. 42; and “Virginia Man Sentenced to 14 Years in Prison for Attempting to Entice Eight-Year-Old Minor to Have Sex Overseas,” *The United States Department of Justice*, December 8, 2017: <https://www.justice.gov/opa/pr/virginia-man-sentenced-14-years-prison-attempting-entice-eight-year-old-minor-have-sex>.

<sup>223</sup>. “Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA,” Article 16 Right to decision on compensation from the offender in the course of criminal proceedings, *Official Journal of the European Union*: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32012L0029>.

lack of State-enforced protection mechanisms for disbursement of funds).<sup>224</sup>

### Lack of Notice and Information about Child Victims' Rights

In Belgium, it appears that there is no systematic method of providing child-friendly information to child victims regarding their rights, including the right to financial compensation.<sup>225</sup> In fact, the provision of information to child victims is left to the initiative of the individuals involved. In Romania, one of the most significant challenges for child victims seeking financial compensation is the lack of information. Additionally, it is worth pointing out that the language barrier may pose a significant challenge for child victims seeking financial compensation. Consequently, it is necessary to create child-friendly material in the native language of the child to improve the financial compensation process. In Sweden, for example, information pertaining to procedures for seeking financial compensation is provided by the Swedish Crime Victim Authority ("Brottsoffermyndigheten") and available in multiple languages including English.<sup>226</sup> In The Netherlands, the information is provided by the Violent Offences Compensation Fund ("Schadefonds Geweldsmisdrijven") in English.<sup>227</sup> This is particularly relevant for foreign child victims who have been sexually abused in the context of live online child sexual abuse. It is worth pointing out that locating child-friendly information pertaining to procedures for seeking financial compensation may be challenging. In France, the information pertaining to claiming financial compensation is provided for both adult and child victims, however, the information is only available in French.<sup>228</sup> Nevertheless, child-friendly information that can be understood by children is a great step towards ensuring that child victims have the opportunity to learn about their rights, to receive legal assistance and claim financial compensation.

### State Funds are not Adapted to Child Victims of Sexual Exploitation and Abuse

In some countries, sexual assault or rape are included under the definition of violent crime<sup>229</sup>, but it is not clear whether all forms of sexual exploitation and abuse of children would qualify. Sexual offences such as rape are often considered as violent crimes, however, it is not clear whether live online child sexual abuse can be considered as such although the sexual abuse is real and, in some instances, as serious as rape.

### Reliance on the Criminal Justice Process and Risk of Re-Traumatization

According to ECPAT, the majority of state-funded financial compensation programs "provide financial assistance that is not meant to compensate the entire damage suffered by the victim, but rather to palliate instances where compensation cannot be recovered through legal proceedings against a perpetrator."<sup>230</sup> In most countries, access to state-funded financial compensation is contingent upon criminal proceedings against a child sex offender. In this regard, child victims may seek financial compensation from the perpetrator as a first resort. It is worth mentioning that a criminal conviction is not necessarily a requirement when applying for state-funded financial compensation, nor is it required that a perpetrator be identified or arrested.<sup>231</sup> This is particularly important for child victims of live online child sexual abuse due to the fact that they can experience one-off sexual abuse, especially in the context of organized operations ("cybersex dens"). By contrast, access to state-funded financial compensation may be contingent upon a child sex offender being charged or convicted. Given the length of court proceedings, this means that child victims have to wait (in some instances several years) until the end of court proceedings before accessing much-needed financial compensation.

**224.** "Barriers to Compensation for Child Victims of Sexual Exploitation, A discussion paper based on a comparative legal study of selected countries," *ECPAT International*, May 2017: <https://ecpat.org/resource/access-to-justice-and-remedies-research-access-to-compensation/>.

**225.** "Victimes d'actes intentionnels de violence," *Federal Public Service Justice*: [https://justice.belgium.be/fr/themes/que\\_faire\\_comme\\_victime/aide\\_financiere/actes\\_intentionnels\\_de\\_violence](https://justice.belgium.be/fr/themes/que_faire_comme_victime/aide_financiere/actes_intentionnels_de_violence).

**226.** "If you have been a victim of crime," *Brottsoffermyndigheten*: <https://www.brottsoffermyndigheten.se/other-languages/english/>.

**227.** "Recognition gives strength," *Schadefonds Geweldsmisdrijven*: <https://www.schadefonds.nl/en/>.

**228.** "Victime d'infraction : indemnisation par le fonds de garantie des victimes," *Service-Public.fr*: <https://www.service-public.fr/particuliers/vosdroits/F2313>; see also: <https://parcours-victimes.fr/>

**229.** For example, in Belgium, child victims of sexual offences would be considered as victims of "deliberate acts of violence".

**230.** "Barriers to Compensation for Child Victims of Sexual Exploitation," *ECPAT International*, p. 29.

**231.** See Belgium's Federal Public Service Justice, The Netherlands' Schadefonds Geweldsmisdrijven, and France's Service-Public.fr.



### Multiplication of Investigations

It is worth pointing out that obtaining financial compensation may be a particularly difficult process when child victims have to tell their story multiple times to all the individuals involved in the legal process, which may result in re-traumatization. For example, ECPAT pointed out that "in Belgium, the Commission on financial aid for crime victims may conduct its own investigations and/or request information to any state-body or authority with respect to the financial, professional, social or tax situation of the perpetrator (if not unknown) and/or of the victim. The Commission can also request from the victim to produce any useful document or information or can decide to hear witnesses."<sup>232</sup> It is therefore important to ensure that child victims do not have to go through multiple interviews by different professionals in the legal process, or to hearings before many people including in some instances the perpetrator. Furthermore, it is important to implement ad-hoc measures such as in camera hearings, live link testimonies and to make sure to involve child specialists in procedures. Nevertheless, it is important to recall that the *Guidelines on Child Victims and Witnesses* states that interference in a child's life should be reduced to a minimum and that professionals working with child victims coordinate their efforts to minimize the number of their interventions.<sup>233</sup>



### Having to Prove Damages

When child victims claim state-funded financial compensation, documentary evidence may be required to establish a causal link between the crime and the injuries for which reparation is sought. However, the fact that child victims may need to provide a wide range of documentary evidence can be very challenging and further harming them or even deterring them from pursuing their rights. For example, in Belgium, child victims may be required to be assessed by a health practitioner before their applications for state-funded financial compensation can be approved, which may be a deterrent factor for child victims. In addition, it can be difficult to obtain expert assessments due to the lack of health or social services, especially in remote areas within countries of the Global South. As a result, it is important to simplify the burden of proof with respect to court proceedings and state-funded financial compensation programs. It is also worth stressing that it is challenging to quantify the

losses suffered by child victims. In the context of live online child sexual abuse, the consequences of the crime(s) can extend through a victim's lifetime and require continuous social counselling as well as medical and psychological treatment. Additionally, it is worth recalling that child victims in the context of live online child sexual abuse may be harmed multiple times over extensive periods of time, and the material produced may be distributed online and circulate indefinitely.



### Length of the Process and Uncertain Outcome

The procedures for seeking financial compensation can be lengthy, which may cause child victims often to refuse to initiate these procedures or to give up at some point during the process. Additionally, child victims may experience unexplained delays in the process, which can be distressful. As a consequence, child victims may assume they have been forgotten in the system. In this regard, ECPAT reported that "due to the length of the procedure, children are not willing to speak about their story anymore and end up minimising what happened to them – so they are not claiming compensation."<sup>234</sup> It is therefore important that the procedures for seeking financial compensation should be fast-tracked for child victims. Additionally, the length of court proceedings may result in child victims having to wait for up to several years before accessing much-needed financial compensation. This means that child victims have to cover medical, counselling and all other daily expenses themselves which they may not be able to afford, especially when they already suffer from socio-economic precarity.

<sup>232</sup>. "Barriers to Compensation for Child Victims of Sexual Exploitation," *ECPAT International*, p. 31.

<sup>233</sup>. "UN Economic and Social Council 2005/20: Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime, V. The right to be treated with dignity and compassion, paragraph 12 and IX. The right to effective assistance, paragraph 23," *UN Economic and Social Council (ECOSOC)*, July 22, 2005: <https://www.un.org/en/ecosoc/docs/2005/resolution%202005-20.pdf>.

<sup>234</sup>. "Barriers to Compensation for Child Victims of Sexual Exploitation," *ECPAT International*, p. 34.

### When Offences are Committed out of Country

Access to justice and financial compensation can be limited when child victims come from foreign countries, or when they are not lawful citizens where they are seeking financial compensation. At the European level, child victims who fall victim of "violent intentional crime" while being abroad in a European Member State in which they do not reside have the opportunity to claim financial compensation to the assisting authority in the State where they reside.<sup>235</sup> The Council Directive 2004/80/EC<sup>236</sup> aims at making financial compensation for violent crime accessible regardless of where the crime took place in the European Union. This provision applies primarily to child victims of sexual exploitation outside of their country of origin such as the exploitation of children in/for prostitution. The implementation of this directive allows child victims to apply for financial compensation in their home country, and it is paid by the European Union state where the crime was committed. Nevertheless, in some instances, child victims who are trafficked may find themselves without any identification documents or proof of residence in the country where they live. As a consequence, they would not be able to claim financial compensation. It is worth recalling that live online child sexual abuse is primarily a transnational phenomenon. In addition, it does not require the movement of child victims within or outside the borders of a country since this is a technology-enabled crime. As a result, child victims are primarily exploited in their country of origin and sexually abused by child sex offenders remotely or located in foreign jurisdictions. In this regard, child victims from foreign countries outside of the European Union or who are not lawful citizens of the country of the traffickers or facilitators may be unable to claim financial compensation.

### Requirements that claimants be lawful residents

Usually, child victims must have the country's nationality, or the offences must be committed on the national territory in order to be eligible for state-funded financial compensation. In the context of live online child sexual, it is important to clarify whether this technology-enabled offence can be considered as occurring in the perpetrator's country. This would make it clear that child victims are eligible for claiming financial compensation. It is also worth recalling that although the acts

are carried out in a transnational and online environment, the perpetrator engages in this crime while being physically in their country.

### Prescription Periods/Statutes of Limitation and Other Time Requirements

Any prescription periods, statutes of limitation and other time requirements may prevent child victims from bringing legal proceedings against child sex offenders after a certain period has passed since the occurrence of the crime. For example, in Romania, child victims must apply within one year on the basis of certain conditions. In Belgium, France and Sweden, child victims may claim state-funded financial compensation within three years; and in The Netherlands, the prescription period is 10 years.<sup>236</sup>

In this regard, ECPAT recommended that "States should ensure that as a minimum, statutes of limitations/prescription periods do not start running before a child has reached the age of 18."<sup>237</sup> This is particularly important for children who have been victims of live online child sexual abuse due to various factors that may result in delayed actions with respect to bringing legal proceedings: being victims at a younger age, severe sexual abuse, alcohol or drug addiction, or close relationship with the perpetrators (e.g., parents, caregivers, relatives). It is also worth noting that child victims of live online child sexual abuse may not be directly identified, especially in the context of one-off sexual abuse and organized operations. Furthermore, the CSAM resulting from live online child sexual abuse is newly produced and therefore not indexed in databases (e.g., Interpol). In Sweden, for example, the prescription period in the context of serious criminal offences such as the rape of a child is abolished, which enables child victims to claim financial compensation at any time.

**235.** "Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims," *Official Journal of the European Union*: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32004L0080>; "Compensation to crime victims forms," *European Justice*: [https://e-justice.europa.eu/272/EN/compensation\\_to\\_crime\\_victims\\_forms?init=true](https://e-justice.europa.eu/272/EN/compensation_to_crime_victims_forms?init=true).

**236.** "If my claim is to be considered in this country," *European Union*: [https://e-justice.europa.eu/491/EN/if\\_my\\_claim\\_is\\_to\\_be\\_considered\\_in\\_this\\_country?clang=en](https://e-justice.europa.eu/491/EN/if_my_claim_is_to_be_considered_in_this_country?clang=en).

**237.** *Ibid.*, p. 42.



### Court Compensation Orders Too Often Not Enforced (Asset Forfeiture)

In a study conducted by ECPAT International with survivors, and professionals working in the Criminal Justice Systems of Nepal, the Philippines and Thailand, some of the respondents interviewed for the study reported that they face difficulties in identifying child sex offenders' assets, especially when the perpetrators or their relatives attempt to obfuscate the assets when they get caught. This prevents law enforcement practitioners from confiscating the perpetrators' assets in order to satisfy financial compensation orders and child victims from accessing much-needed financial compensation. Among the key recommendations identified by ECPAT International, it is important to improve the ability of child victims "to receive restitution from convicted offenders by identifying and attaching defendants' assets early in the proceedings and amending money laundering laws to permit victims to be paid from forfeited property."<sup>238</sup>

At the European level, the Directive states that "Member States are invited to consider providing for the possibility to impose financial penalties in addition to imprisonment" especially in cases involving the sexual exploitation of children for financial gain.<sup>239</sup> Additionally, Member States shall take the necessary measures to ensure that their competent authorities are entitled to seize and confiscate instrumentalities and proceeds from the offences referred to in Articles 3 [Offences concerning sexual abuse], 4 [Offences concerning sexual exploitation] and 5 [Offences concerning child pornography].<sup>240</sup> Nevertheless, it is worth pointing out that these provisions are primarily focused on the supply side of child sexual exploitation and abuse. In the context of live online child sexual abuse, these provisions primarily address the trafficking of children for sexual purposes by inviting Member States to confiscate the criminal proceeds of the perpetrators who are sexually exploiting children for financial gain. However, it is important to also address the demand side in order to ensure that child victims have access to financial compensation. Moreover, it is worth highlighting that perpetrators specifically target vulnerable children impacted by social and economic precarity. As a result, child sex offenders should be subject to asset forfeiture provisions in order to confiscate their assets and property. The assets that would be confiscated could be used to achieve restitution to child victims or to support

programs dedicated to help children who have been victims of child sexual exploitation and abuse. In this regard, the Lanzarote Convention may serve as a legal basis for national legislation as it states that "Each Party may establish that the proceeds of crime or property confiscated in accordance with this article can be allocated to a special fund in order to finance prevention and assistance programmes for victims of any of the offences established in accordance with this Convention."<sup>241</sup>

In the United States, restitution is mandatory for several criminal offences involving the sexual exploitation and abuse of children.<sup>242</sup> In the case of William Augusta described earlier, the main perpetrator Scott Lane pleaded guilty to six counts of CSAM offences, including conspiracy to produce and production of CSAM, and was ordered to pay \$50,000 of restitution to the then-6-year-old victim who was sexually abused in real time online and \$476.95 to another victim. Nevertheless, it is worth highlighting that "victims and survivors of crime are responsible for pursuing their own compensation claims. They must report the crime to law enforcement and file a compensation claim to meet initial eligibility requirements. However, many victims do not report crime, and of those who do, some are unaware of the existence of victim compensation."<sup>243</sup>

**238.** "Through the Eyes of the Child: Barriers to Access to Justice and Remedies for Child Victims of Sexual Exploitation, Interviews with Survivors and Professionals in the Criminal Justice Systems of Nepal, the Philippines and Thailand," *ECPAT International*, February 2017: <https://ecpat.org/resource/access-to-justice-and-remedies-research-through-the-eyes-of-the-child/>, p. 23.

**239.** "Directive 2011/93/EU," Recital 16.

**240.** *Ibid.*, Article 11, Seizure and confiscation.

**241.** "Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201)," *Council of Europe*, Article 27 – Sanctions and measures: <https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treaty-num=201>.

**242.** "U.S. Code," *Cornell Law School Legal Information Institute*, 18 U.S. Code § 2264

- Restitution: <https://www.law.cornell.edu/uscode/text/18/2264>; 18 U.S. Code § 2259

- Mandatory restitution: <https://www.law.cornell.edu/uscode/text/18/2259>; and 18 U.S. Code § 3664

- Procedure for issuance and enforcement of order of restitution: <https://www.law.cornell.edu/uscode/text/18/3664>.

**243.** Douglas N. Evans, "Compensating Victims of Crime," *Research & Evaluation Center John Jay College of Criminal Justice*, June 2014: [https://www.njin.org/uploads/digital-library/jf\\_johnjay3.pdf](https://www.njin.org/uploads/digital-library/jf_johnjay3.pdf), p. 15.

Moreover, "in some instances, compensation eligibility requirements are unclear and victims may not know if they are eligible to apply. Administrative complications may also prevent entitled victims from receiving compensation."<sup>244</sup>

In The Netherlands, no provision pertaining to the forfeiture and seizure of assets that are applicable in the context of sex-based crimes was identified. Such provisions are rather applicable in the context of financial crimes and therefore cannot be used in the context of live online child sexual abuse as well as sex-based crimes in general.

In France, Article 131-21 of the French Penal Code sets out the rules regarding forfeiture and seizure of assets in the context of criminal prosecution. It is applicable *ipso jure* for all offences for which the sanction includes imprisonment superior to one year, hence to most sexual offences discussed in this study. The article allows the seizure of all assets that present a link to the offence (either that allowed the commission of the offence, or the proceeds or object of the offence). In addition, article 131-21(6) states that when the law expressly provides it, the seizure may also target part or all the assets belonging to the perpetrator. This applies to the corruption of a minor under 15 years or committed by an organized group and the offence of recording, transmitting or distributing CSAM, and the offences of regularly accessing a communication service displaying CSAM and purchasing or possessing CSAM, where it is committed by an organized group.<sup>245</sup> As a result, this provision may be relevant for perpetrators involved in live online child sexual abuse resulting from the trafficking of children for sexual purposes consisting of child sex offenders targeting vulnerable individuals and children abroad and making payments in order to sexually abuse children. The fact that this provision also covers material used in the context of the crime, the seizure of this material may provide valuable information on the underlying criminal networks (structure, communication, financial data, etc.). However, according to the OCRVP, no cases of live online child sexual abuse have resulted in the perpetrator's asset forfeiture and financial compensation for child victims.



### Camden Asset Recovery Inter-Agency Network (CARIN)

CARIN is an informal inter-agency network of judicial and law enforcement practitioners in the field of asset tracing, freezing, seizure and confiscation. The CARIN national contact points support the complete asset recovery process by tracing, freezing, seizing, forfeiting and confiscating assets. The CARIN national contact points are representatives of their member states and can be contacted by any law enforcement officer, prosecutor, magistrate or judge, or any official from an Asset Recovery Office (ARO) or Asset Management Office (AMO) who seeks assistance. The CARIN network is composed of 54 registered member jurisdictions, including 28 EU Member States and nine international organizations. It is worth mentioning that the working language of the network is English. The Member Status is open to European Member States and to states and jurisdictions which were invited to the CARIN launch congress in 2004. In this regard, each member may nominate two representatives, one from a Law Enforcement Agency and one from a Judicial Authority to be their CARIN contacts. Belgium, France, The Netherlands, Romania, and Sweden have a member status, however, law enforcement officers interviewed in the context of this research stated being unaware of this informal network.



### Lack of State-Enforced Protection Mechanisms for Disbursement of Funds

When awarding financial compensation from perpetrators or state funds, it is possible that the monetary award may not be used in the child victim's best interests. In this regard, parents may not necessarily be available (e.g., deceased) or suitable to receive and manage the monetary award, especially when the parents are sexually exploiting and abusing their own children or if they are acquiescing to their children being sexually exploited and abused. According to a study conducted by IJM, the online sexual exploitation of children (including live online child sexual abuse) in the Philippines is primarily a family-based crime. The IJM's study revealed that "biological parents

<sup>244</sup>. *Idem*.

<sup>245</sup>. "Sous-section 5 : Du contenu et des modalités d'application de certaines peines (Articles 131-19 à 131-36)," Article 131-21, *Légifrance*: [https://www.legifrance.gouv.fr/codes/article\\_lc/LEGIARTI000028312062](https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000028312062).

facilitated the abuse of 41% of all victims (89 victims), and other relatives facilitated the abuse of another 42% of victims (90 victims) [for a total of 217 victims]. Furthermore, many children experienced OSEC victimization alongside other family members.<sup>246</sup> In addition, some parents may not be suitable because they fail to support and care for their children and may even stigmatize them. As ECPAT International pointed out in a study conducted with children, adult survivors and their service providers in Nepal, the Philippines and Thailand, “children value and recognise the importance of being ‘accepted’ by their family and community and yet they may experience stigma and discrimination if they return home.”<sup>247</sup> In the same regard, it is worth mentioning kinship care which is a method primarily used in Southern Asia consisting of placing children within their extended family or with their family’s close friends. However, this method may not be suitable as well due to the fact that in some situations entire communities are involved in the sexual exploitation of children.<sup>248</sup> The same may be true for shelters or care centers when child victims lack parental support or do not have a guardian to whom the monetary award can be entrusted. ECPAT International highlighted that “due to shelters often serving a diverse population, children who have experienced CSE may be more likely to be targeted and stigmatised because of their experiences.”<sup>249</sup> Additionally, shelters care centers should not be considered as long-term solutions for child victims, and “funding for and development of other more appropriate forms of care should be prioritised.”<sup>250</sup> In the context of live online child sexual abuse in countries of the Global North where cases result primarily from the solicitation of children for sexual purposes, offences related to the trafficking of children for sexual purposes may be less prevalent than in countries of the Global South which are characterized by socioeconomic disparity. In countries of the Global South, a higher proportion of children may be sexually exploited for financial gain, including by their own parents and relatives. As a result, parents or relatives to child victims in countries of the Global North where the solicitation of children for sexual purposes is more prevalent are better candidates for receiving and managing the monetary award since they are not involved in the sexual exploitation of their own children. Nevertheless, some countries in the Global North such as Romania may be impacted more by the trafficking of children for sexual purposes similar to countries of the Global South.

It is important to adopt child-sensitive procedures with respect to the management and disbursement of financial compensation funds. In this regard, it is worth mentioning the UNHCHR’s suggestion that “any compensation awarded to child victims should remain partially under the control of the State so that it may be used by the victims once they reach the age of majority in order to give them an opportunity to build their future.”<sup>251</sup> Nevertheless, it may be in the best interests of child victims to receive funds directly, especially when they are deemed mature enough. The funds could be also awarded in the form of instalments or regular allowances since the receipt of a large amount of money may put child victims in danger. It is important to emphasize that these methods should be carefully evaluated on a case-by-case basis due to the unique needs and circumstances in every child victim’s situation. Any financial compensation awarded to child victims should serve their best interests. In the context of live online child sexual abuse, the harm caused by the sexual exploitation and abuse is significant and should be addressed by providing assistance as long as necessary for the child victims’ physical and psychological recovery. The process of recovery may last into adulthood, therefore, it is important to consider long-term assistance if deemed necessary. Additionally, assistance could be extended to parents, relatives or guardians as long as they are not involved in the sexual exploitation and abuse of child victims.

**246.** “Online Sexual Exploitation of Children,” *International Justice Mission*.

**247.** “Connecting the Dots: Supporting the Recovery and Reintegration of Children Affected by Sexual Exploitation,” *ECPAT International*, May 2017: <https://ecpat.org/resource/access-to-justice-and-remedies-research-supporting-the-recovery-and-reintegration-of-children-affected-by-sexual-exploitation/>, p. 16.

**248.** “Barriers to Compensation for Child Victims of Sexual Exploitation,” *ECPAT International*, p. 45.

**249.** Connecting the Dots: Supporting the Recovery and Reintegration of Children Affected by Sexual Exploitation,” *ECPAT International*, May 2017: <https://uobrep.open-repository.com/bitstream/handle/10547/623521/Access-to-Justice-Thematic-Report-Connecting-the-dots.pdf?sequence=3>, p. 68.

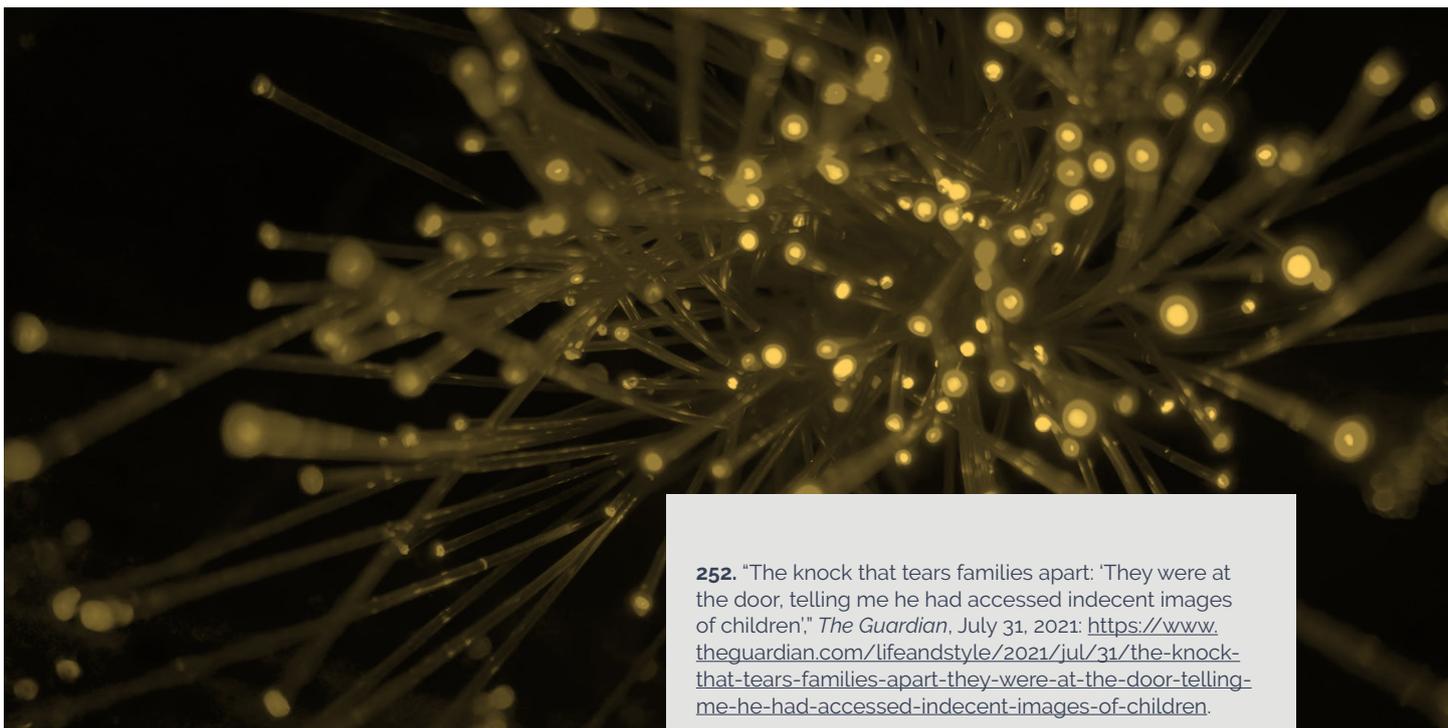
**250.** *Ibid.*, p. 118.

**251.** “Summary of the consultations held on the draft basic principles on the right to effective remedy for victims of trafficking in persons : Report of the United Nations High Commissioner for Human Rights,” *UN Human Rights Council*: May 2, 2014: <https://digitallibrary.un.org/record/773339?ln=en>, p. 9.

# PROTECTION MEASURES FOR INDIRECT VICTIMS

While it is crucial to ensure justice for children as well as to provide child victims with the necessary help and resources such as psychological counselling, social services and financial compensation, it is also worth ensuring that indirect victims of sex-based crimes against children receive a fair amount of help as well. In this regard, parents and relatives of child victims of live online child sexual abuse resulting from either the trafficking or solicitation of children for sexual purposes should be provided with the necessary resource in order to cope with the trauma they may experience. For example, in the United Kingdom, hundreds of child sex offenders are arrested for sex-based crimes against children. As a result, law enforcement practitioners often inform the relatives of the child sex offenders such as spouses, parents, children, etc. However, these individuals may be left behind once they

are informed about the offences committed by their relative. The consequences of the offences perpetrated by child sex offenders may expand to the circle of individuals both around the child victims as well as the perpetrators themselves, especially when they use the internet to commit sex-based crimes against children in secrecy without their entourage being aware of their double life. This is particularly the case for the relatives of perpetrators from countries of the Global North regardless of whether the perpetrators committed acts to child victims abroad or not and regardless of the type of live online child sexual abuse. This is also the case for the relatives of child victims of live online child sexual abuse resulting from the solicitation of children for sexual purposes in countries of the Global North (e.g., child victim in the United Kingdom from a perpetrator also located in United Kingdom). As regards the relatives of child victims located in countries of the Global South, these are primarily involved in the sexual exploitation and abuse of child victims.<sup>252</sup>



**252.** "The knock that tears families apart: 'They were at the door, telling me he had accessed indecent images of children,'" *The Guardian*, July 31, 2021: <https://www.theguardian.com/lifeandstyle/2021/jul/31/the-knock-that-tears-families-apart-they-were-at-the-door-telling-me-he-had-accessed-indecent-images-of-children>.

# THE ROLE OF THE FINANCIAL SECTOR

The financial sector plays a crucial role in the fight against live online child sexual abuse as financial intelligence is one of the strongest pieces of evidence aiding law enforcement practitioners in the identification of live online child sexual abuse. As the Egmont Group of Financial Intelligence Units ("FIUs") points out:



*Online streaming of CSAE is a crime often underpinned by financial transactions, this positions Financial Intelligence Units (FIUs) as key partners for law enforcement agencies (LEAs). Utilising the data held by the global network of FIUs provides opportunities to enhance strategic and tactical intelligence efforts to combat CSAE. The analysis of reports submitted by private sector entities, including Suspicious Activity Reports (SARs) and Suspicious Transaction Reports (STRs), enables FIUs to provide LEAs with actionable intelligence relating to the movement of funds and the identification of both offenders and facilitators.<sup>253</sup>*

## The Importance of Financial Intelligence

In the second edition of the Country Monitoring Report published by ECPAT International, the Philippines "child sex industry" is one of the biggest in the world exceeding \$1 billion a year according to the government officials.<sup>254 255</sup> The remittance of payments related to live online child sexual abuse primarily occurs through MSBs and internet payment providers, and to a smaller extent through banks. The financial transactions associated with live online child sexual abuse present opportunities for law enforcement practitioners to take operational action against child sex offenders, as well as traffickers and facilitators. Furthermore, the information contained in financial transactions creates profiling opportunities for FIUs to enhance strategic intelligence. The SARs/STRs also contain key information and personal identifiable information ("PII") of perpetrators and constitute a valuable source of intelligence with respect to the networks' structure and operations involved in live

**253.** "Combatting Online Child Sexual Abuse and Exploitation through Financial Intelligence," *Egmont Group of Financial Intelligence Units*, July 2020: [https://egmontgroup.org/wp-content/uploads/2021/09/2020\\_Public\\_Bulletin\\_Combatting\\_Online\\_Child\\_Sexual\\_Abuse\\_and\\_Exploitation\\_Through\\_Financial\\_Intelligence.pdf](https://egmontgroup.org/wp-content/uploads/2021/09/2020_Public_Bulletin_Combatting_Online_Child_Sexual_Abuse_and_Exploitation_Through_Financial_Intelligence.pdf), p. 3.

**254.** In May 2022, IJM reported that an Australian man was sentenced to over 14 years of prison for having sexually abused 69 children in the Philippines via live online child sexual abuse. The perpetrator managed to send almost half a million Australian dollars in order to sexually abuse these children in some instances as young as seven years old. <https://ijm.org.au/news/western-australian-man-jailed-after-ordering-livestreamed-child-sex-abuse-from-the-philippines/>

**255.** "Philippines – Country Monitoring Report," 2nd edition, *ECPAT International*, 2011: <https://ecpat.org/resource/philippines-country-monitoring-report/>.

online child sexual abuse. National FIUs can uncover meaningful transactional patterns in relation to live online child sexual abuse that would otherwise not be evident to financial institutions alone. The compilation of financial data from various reporting entities enables national FIUs to provide law enforcement with valuable information. As a result, law enforcement can launch criminal investigations on the basis of intelligence transmitted by FIUs and can result in legal action, the seizure and confiscation of the proceeds from criminal conduct as well as the rescue of victims and the conviction of child sex offenders, traffickers and facilitators. Financial investigations may also produce strong and concrete evidence which may be used in courts of law to convict defendants. It is therefore of paramount importance that the financial sector has the ability to identify indicators of live online child sexual abuse and implement monitoring rules in order to mitigate the risk of this phenomenon. These indicators can be used as starting points for identifying any potential threats, to disrupt the individuals and networks engaged in misconduct and to take mitigating actions in a timely manner to prevent any further harm caused to children, and to report such activity to law enforcement. As regards financial indicators of live online child sexual abuse and more generally online child sexual abuse and exploitation, it is worth mentioning a certain number of private initiatives listing these financial indicators which aims at strengthening financial institutions' ability to detect this phenomenon through their monitoring and investigative activities such as the "Tech and Financial Sector Indicators of Livestreaming Online Sexual Exploitation of Children" published by IJM and the "RedFlag Accelerator MSHT and CSE Typologies published by RedCompass Labs".<sup>256</sup>

## THE ROLE OF SARs/STRs

The Egmont Group requires the private financial sector comprising banks, MSBs, money transfer platforms and cryptocurrency exchanges to flag suspicious financial activity and to deliver SARs/STRs which indicate possible sex-based crimes against children. A SAR/STR is a document which must be filed by a financial institution or associated business with national FIUs whenever an economic crime is suspected. The legal purpose of filing a SAR is to report on any suspicious activity by an entity, business or individual which raises the suspicion

of money laundering, terrorist financing and any other criminal activity that can be identified through transactions. SARs are investigated by national FIUs and distributed to the appropriate law enforcement agencies or organizations. SAR/STR form a core part of the strategy of law enforcement in their battle against crimes and the intelligence they provide on suspected criminals includes PII, which helps to disrupt criminal networks and identify child sex offenders, traffickers and facilitators.



### SAR/STR Codes

The use of SAR/STR codes is considered good practice and allows national FIUs as well as law enforcement to conduct analysis in order to identify trends and patterns, high-risk cases for development and to respond immediately if deemed necessary. The use of SAR/STR enables national FIUs and law enforcement to search and locate criminal activities more quickly and ultimately accelerates the investigative process. Currently, there are only three jurisdictions advising to use SAR/STR codes:

- **Canada:** #Project SHADOW or #SHADOW<sup>257</sup>;
- **United Kingdom:** XXV3XX (risk to children – including sexual abuse and exploitation)<sup>258</sup>;
- **United States:** OCSE-FIN-2021-NTC3<sup>259</sup>.

<sup>256</sup>. "Tech and Financial Sector Indicators of Livestreaming Online Sexual Exploitation of Children," *International Justice Mission*, December 2020: <https://osec.ijm.org/resources/tech-and-financial-sector-indicators-of-livestreaming-osec/>; "The RedFlag Accelerator MSHT and CSE Typologies," *RedCompass Labs*: <https://www.redcompasslabs.com/redflagaccelerator>.

<sup>257</sup>. "Operational alert: Laundering of proceeds from online child sexual exploitation," *Government of Canada*, December 2020: <https://www.fintrac-canafe.gc.ca/intel/operation/exploitation-eng>.

<sup>258</sup>. "Suspicious Activity Reports," *National Crime Agency*: <https://www.nationalcrimeagency.gov.uk/what-we-do/crime-threats/money-laundering-and-illicit-finance/suspicious-activity-reports>.

<sup>259</sup>. "FinCEN Calls Attention to Online Child Sexual Exploitation Crimes," *Financial Crimes Enforcement Network*, September 16, 2021: <https://www.fincen.gov/sites/default/files/shared/FinCEN%20OCSE%20Notice%20508C.pdf>.

## The importance of Public-Private Partnerships

While financial institutions already collaborate with LEAs to investigate live online child sexual abuse, it appears to be necessary to adopt a more proactive approach in order to disrupt this phenomenon. In this regard, it is important to leverage public-private partnerships such as the Fintel Alliance, which consists of representatives from public and private organizations that work together to combat complex or emerging crimes including child sexual abuse and exploitation.<sup>260</sup> The Fintel Alliance is an AUSTRAC public-private partnership initiative that was established in 2017 bringing together experts from a range of organizations involved in the fight against various types of crime including child sexual abuse and exploitation. The partners of this initiative include major banks and MSBs as well as law enforcement and security agencies from Australia and overseas. The partners involved in the Fintel Alliance collaborate via two information-sharing hubs: The Operations Hub, where partners exchange and analyze financial intelligence by combining data with tracking tools and best-practice methodologies from their organizations; and The Innovation Hub, where partners co-design and test new and innovative technology solutions that assist in gathering and analyzing financial intelligence at an operational level, and assess the impact of emerging technologies (e.g. blockchain, cryptocurrency). The Fintel Alliance also publishes resources to help private companies understand, identify and report suspicious financial activity as well as to detect and prevent child sexual abuse and exploitation. In this regard, they publish financial crime guides, which provide detailed information about the financial aspects of various types of crime including child sexual abuse and exploitation.<sup>261</sup>

It is worth emphasizing that financial intelligence alone is not sufficient for law enforcement practitioners. Moreover, it can be challenging to distinguish transactions pertaining to live online child sexual abuse from transactions for adult sexual content, scam activity, or other crimes. As a result, it is necessary to combine financial

intelligence with other sources via data exchange with law enforcement and private sector entities as described hereabove. In this regard, it is worth mentioning the Egmont Group, which is a consortium of global Financial Intelligence Units ("FIUs"). The Egmont Group conducted a study focused on how financial intelligence could be harnessed to combat live online child sexual abuse, which highlights the importance of adopting a multi-disciplinary and multi-sector approach to deliver a suitable response to live online child sexual abuse.<sup>262</sup> There is great potential for establishing public-private partnerships between LEAs and payment as well as online service providers, which may provide a powerful complement to financial intelligence. It is also worth mentioning the U.S. Financial Coalition Against Child Sexual Exploitation ("FCACSE"), formerly known as the Financial Coalition Against Child Pornography ("FCACP"). The FCACSE was launched in 2006 by the International Centre for Missing & Exploited Children ("ICMEC") and NCMEC including leading banks, credit card companies, electronic payment networks, third party payments companies, and internet services companies from the United States working together with law enforcement to disrupt the economics of the sexual exploitation and abuse of children.<sup>263</sup> The success of the U.S. FCACP resulted in the creation of the Financial Coalition against Commercial Sexual Exploitation of Children in Europe and the Asia-Pacific Financial Coalition Against Child Sexual Exploitation, ("APFC"), formerly known as the APAC Financial

<sup>260</sup>. "Fintel Alliance," *Australian Government AUSTRAC*: <https://www.austrac.gov.au/about-us/fintel-alliance>.

<sup>261</sup>. "Combating the sexual exploitation of children for financial gain activity indicators report," *Australian Government AUSTRAC*: <https://www.austrac.gov.au/business/how-comply-guidance-and-resources/guidance-resources/combating-sexual-exploitation-children-financial-gain-activity-indicators-report>.

<sup>262</sup>. "Combatting Online Child Sexual Abuse and Exploitation through Financial Intelligence Public Bulletin," *Egmont Group of Financial Intelligence Units*, July 2020: [https://egmontgroup.org/wp-content/uploads/2021/09/2020\\_Public\\_Bulletin\\_Combatting\\_Online\\_Child\\_Sexual\\_Abuse\\_and\\_Exploitation\\_Through\\_Financial\\_Intelligence.pdf](https://egmontgroup.org/wp-content/uploads/2021/09/2020_Public_Bulletin_Combatting_Online_Child_Sexual_Abuse_and_Exploitation_Through_Financial_Intelligence.pdf).

<sup>263</sup>. U.S. Financial Coalition Against Child Sexual Exploitation, *International Centre for Missing & Exploited Children*: <https://www.icmec.org/fcacse/>.

Coalition Against Child Pornography), in Asia.<sup>264</sup> In The Netherlands, for example, the Dutch Banking Association cooperates with the European Financial Coalition (EFC) and "The criminal justice authorities are also holding talks with the Dutch Banking Association (NVB) to exchange information on payment flows and the techniques used to provide services on or via the internet. Priority is being given to child pornography. The NVB is willing to help combat the distribution of child pornography on the internet."<sup>265</sup> These initiatives consist of partnerships between public authorities, the private sector, and the non-profit sector which enables law enforcement, regulatory bodies, private companies, and non-profit organizations to share, leverage, and collaborate against the sexual exploitation and abuse of children for financial gain. In this regard, it is worth mentioning Project Shadow, which is a public-private partnership aiming at enhancing methods to detect, report and disrupt all the forms of online child sexual exploitation and especially the financial flows and laundering of proceeds resulting from these crimes. This partnership is co-led by Scotiabank and the Canadian Centre for Child Protection. It is also supported by the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) with participation from major financial institutions and LEAs in Canada. Project Shadow also aims at raising awareness about child sexual exploitation within the financial sector and law enforcement, identifying indicators of money laundering pertaining to child sexual exploitation, increasing suspicious transaction reporting to the Canadian FIU (FINTRAC), establishing a new SAR/STR code to indicate financial activity associated to online child sexual exploitation, and contributing to mainstreaming financial investigations on online child sexual exploitation on the international level.<sup>266</sup> It is worth highlighting that Project Shadow has also resulting in the creation of an extensive list of financial indicators pertaining to online child exploitation, which may apply in some instances to live online child sexual abuse, especially when it results from the trafficking of children for sexual purposes.<sup>267</sup> In the same regard, the AUSTRAC's Fintel Alliance resulted in the creation of financial indicators to assist financial service providers and law enforcement agencies to detect suspect transactions by providing updated financial and environmental indicators to more effectively combat child sexual exploitation.<sup>268</sup>

## The Increased Use of Cryptocurrency and New Financial Services

Nevertheless, such collaboration may be complicated due to the increasing diversity of financial services. Moreover, the massive adoption of cryptocurrency may also pose challenges. While this is possible to trace the financial flows via specialized law enforcement units or private blockchain analysis and forensics organizations, not all LEAs may have the required know-how and resources to investigate such activity. In this regard, it is worth considering collaborating with such organizations which have expertise on this matter and can perform effective blockchain and cryptocurrency investigations (e.g., Chainalysis). In addition, only 22% of bankers and financial investigators feel confident in detecting crypto-related payments according to a poll carried out by CipherTrace over three quarters during the

**264.** Financial Coalition against Commercial Sexual Exploitation of Children, *European Crime Prevention Network*: <https://eucpn.org/document/financial-coalition-against-commercial-sexual-exploitation-of-children>; Asia-Pacific Financial Coalition Against Child Sexual Exploitation, *International Centre for Missing & Exploited Children*: <https://www.icmec.org/apfc-asia-pacific-financial-coalition-against-child-sexual-exploitation/>.

**265.** "Sentencing," *Government of the Netherlands*: <https://www.government.nl/topics/crime-and-crime-prevention/sentencing>.

**266.** "Project Shadow: AML Investigations Into Online Child Sexual Exploitation," *ACAMS Today*, December 22, 2020: <https://www.acamstoday.org/project-shadow-aml-investigations-into-online-child-sexual-exploitation/>.

**267.** "Operational alert: Laundering of proceeds from online child sexual exploitation," *Financial Transactions and Reports Analysis Centre of Canada*, December 2020: <https://www.fintrac-canafe.gc.ca/intel/operation/exploitation-eng>.

**268.** "Combating the sexual exploitation of children for financial gain activity indicators report," *Australian Transaction Reports and Analysis Centre*, November 2019: <https://www.austrac.gov.au/business/how-comply-guidance-and-resources/guidance-resources/combating-sexual-exploitation-children-financial-gain-activity-indicators-report>.

year of 2020.<sup>269</sup> CipherTrace also reported that 56% of virtual asset service providers (“VASPs”) globally were assessed as having weak or porous know-your-customer (“KYC”) processes during the same year, which enables criminals to deposit or withdraw their ill-gotten funds without providing PII and fly under the radar. Europe appeared to have the highest count of VASPs with weak KYC processes, namely exchanges with major deficiencies in their KYC process allowing any daily deposit or withdrawal with very minimal to no KYC, followed by the Asia and Pacific region. Furthermore, more than half of the top 10 worst KYC countries in the world appeared to be in Europe.<sup>270</sup> Nevertheless, it is worth highlighting that in the context of live online child sexual abuse, the use of cryptocurrencies may be limited. This crime relies primarily on traditional MSBs and banks, rather than cryptocurrency. One of the driving forces for live online child sexual abuse is poverty, especially in countries of the Global South. As a result, liquidity is a key factor as impoverished individuals engage in live online child sexual abuse to survive, therefore, receiving payments in the form of cryptocurrency would be of little to no use. Additionally, MSBs are more accessible in those countries, including in remote rural locations. Although the use of

cryptocurrencies may be limited in the context of live online child sexual abuse, there is a clear lack of research in this area, and it is therefore difficult to assess the prevalence of cryptocurrency in live online child sexual abuse. As ECPAT pointed out that: “Although there is evidence showing why [cryptocurrencies] are attractive to child sex offenders, little is known about the broader scope, scale, and nature of their uses [which is] necessary to help develop strategies to prevent or intervene to interdict it.”<sup>271</sup>

The technological advancements have facilitated instant access as well as instant payments by millions if not billions of individuals throughout the world, as a result financial institutions must remain vigilant in order to prevent the sexual exploitation and abuse of children. In this regard, some law enforcement practitioners pointed out that financial institutions should be required or able to report occurrences of sexual exploitation and abuse to law enforcement units specialized in such crimes or any other mandated agency.<sup>272</sup> This is crucial since undercover investigations and the identification of suspicious financial transactions are currently the most effective methods of successfully combating live online child sexual abuse.

**269.** “Only 22% of Bankers and Financial Investigators Feel Confident Detecting Crypto-Related Payments,” *CipherTrace*, 10 December 2020, <https://ciphertrace.com/only-22-percent-of-bankers-feel-confident-detecting-crypto-related-payments/>.

**270.** “2020 Geographic Risk Report: VASP KYC by Jurisdiction,” *CipherTrace*, October 2020, <https://ciphertrace.com/2020-geo-risk-report-on-vasp-kyc/>.

**271.** “Online Child Sexual Exploitation: An analysis of Emerging and Selected Issues,” *ECPAT International Journal*, Issue 12, April 2017, <https://blog.chainalysis.com/reports/cryptocurrency-human-trafficking-2020>, p. 11.

**272.** Questionnaires

# THE ROLE OF TECHNOLOGY COMPANIES

## The Situation in Europe

In July 2020, the European Commission highlighted that the demand for CSAM/CSEM increased by 25% in some EU Member States as a result of the COVID-19 outbreak.<sup>273</sup> While the COVID-19 has greatly exacerbated child sexual abuse and exploitation, the European Commission also highlighted that the number of reports in relation to CSAM/CSEM concerning Europe has dramatically increased over the last decade reaching over 725,000 reports and over 3 million files of the nearly 17 million reports and 70 million files received on the CyberTipline operated by the NCMEC in 2019. During the year 2020, the CyberTipline received more than 21.7 million reports from Electronic Service Providers (ESPs).<sup>274</sup> In fact, Europe has become the largest host of CSAM/CSEM. IWF has observed that most of webpages containing CSAM/CSEM are hosted in Europe since 2016. IWF reported that reports of webpages hosted in Europe accounted for 90% of the total reports.<sup>275</sup> Among the top 10 countries hosting webpages containing CSAM/CSEM in 2020, half of them were European countries including The Netherlands (77%), France (4%), Luxembourg (2%), Latvia (2%) and Romania (1%).<sup>276</sup> INHOPE also reported similar trends regarding European countries hosting webpages containing CSAM/CSEM which included The Netherlands (94%), Luxembourg (1%), Latvia (1%), Romania (1%) and Germany (1%).<sup>277</sup>

## Technical Challenges: Identifying, Removing and Reporting Live Online Child Sexual Abuse

The real-time monitoring of live online child sexual abuse is technically challenging, especially in certain circumstances when livestreaming sessions are protected by additional layers of anonymity such as passwords and end-to-end encryption. In this regard, Europol pointed out that child sex offenders are increasingly using encrypted communication platforms.<sup>278</sup> This particularly exacerbates the ability of monitoring, detecting and reporting live online child sexual abuse given that livestreaming sessions and the content cannot be accessed by the digital service providers, let alone law enforcement. Furthermore, although the widespread use of file hashing and PhotoDNA results in the detection and reporting of millions of known CSAM, it does not and cannot detect newly produced CSAM.

**273.** "EU strategy for a more effective fight against child sexual abuse," *European Commission*, 24 July 2020, [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_20\\_1380](https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1380).

**274.** "Rise in Online Enticement and Other Trends: NCMEC Releases 2020 Exploitation Stats," *National Center for Missing and Exploited Children*, February 24, 2021: <https://www.missingkids.org/blog/2021/rise-in-online-enticement-and-other-trends--ncmec-releases-2020-#:~:text=2020%20was%20a%20record%2Dbreaking,were%20from%20electronic%20service%20providers>.

**275.** "The Internet Watch Foundation Annual Report 2020," Geographical hosting, *Internet Watch Foundation*: <https://annualreport2020.iwf.org.uk/trends/international/geographic>.

**276.** *Idem*.

**277.** "Annual Report 2020," *INHOPE*: <https://inhope.org/media/pages/the-facts/download-our-whitepapers/c16bc4d839-1620144551/inhope-annual-report-2020.pdf>.

**278.** IOCTA 2020.

This includes CSAM which is transmitted in real time without being stored as a file and which is not subject to screening and content review. When CSAM resulting from live online child sexual abuse is captured and spread online, it may result in the re-victimization of children for a longer period of time compared to already reviewed and hashed CSAM which can be detected automatically when spread online. Additionally, CSAM resulting from live online child sexual abuse may take the form of video files which takes more time to review than image files. In fact, the number of videos exceeded the number of images reported via the NCMEC CyberTipline in 2019. During the year 2021, for example, the number of video files accounted for more than 44 million while the number of images accounted for more than 39 million files.<sup>279</sup> It is therefore crucial for technology companies to tackle live online child sexual abuse. In this regard, these companies should be aware of the scale and seriousness of this issue. Moreover, technology companies should also develop and deploy innovative technology in order to detect this type of harm caused to children.

## Detecting CSAM

### HASHING AND HASH MATCHING TECHNIQUES

It is possible to detect CSAM via two techniques called "hashing" and "hash matching", which enable technology companies to identify, remove and report CSAM. The process of hashing consists of transforming a file of any size into a shorter and fixed-length data value, which corresponds to the file's unique signature or "hash". On the other hand, the process of hash matching consists of comparing a file or newly discovered CSAM files to already hashed CSAM files within a database. In case there is a match, it means that the file or newly discovered CSAM has been already reviewed and confirmed as being CSAM. There are existing databases which facilitate hash-matching, one of the most significant being Interpol's ICSE database which houses more than 2.7 million hashes of CSAM. It is also used by 67 police forces worldwide.<sup>280</sup> It is also worth mentioning that other databases held by public and private organizations also exist.

### THE PHOTO DNA TECHNOLOGY

Photo DNA is a technology developed by Microsoft in order to identify and remove CSAM.<sup>281</sup> It enables analysts and law enforcement practitioners not to manually review each CSAM file as it automatically identifies CSAM files which have been already reviewed. Photo DNA uses the hash matching process and is not only able to identify identical images but also altered versions of those images which may have been modified in order to escape detection. In practice, it converts images into a greyscale format, creates a grid, and then a numerical value is assigned to each square of the grid. The assigned numerical values ultimately form the "hash" of the image, which corresponds to the unique value or signature of the image. This technology can be used by technology companies in order to detect CSAM files on their online platforms. Additionally, this technology preserves the users' privacy by not actually scanning files but only the hash of the files, which is a numerical value and does not contain PII, against other hashes located in databases. As a result, technology companies can detect CSAM uploaded on their platforms without affecting their users' privacy and report as well as remove it from their platforms.

It is worth mentioning that technology companies have the opportunity to share their hashes with other technology companies via the Industry Hash Sharing Platform created by Thorn, Facebook and Google.<sup>282</sup> This type of collaboration may reduce the duplication of efforts and optimize the identification of CSAM.

As regards CSAM files in the form of videos, IWF and Microsoft developed the PhotoDNA technology in order to detect videos as well. In the

<sup>279</sup>. CyberTipline, *National Center for Missing and Exploited Children*: <https://www.missingkids.org/gethelpnow/cybertipline#:~:text=Total%20Reports.data%20in%20the%20CyberTipline%20Report.>

<sup>280</sup>. International Child Sexual Exploitation database, *Interpol*: [https://www.interpol.int/en/Crimes/Crimes-against-children/International-Child-Sexual-Exploitation-database.](https://www.interpol.int/en/Crimes/Crimes-against-children/International-Child-Sexual-Exploitation-database)

<sup>281</sup>. PhotoDNA, *Microsoft*: [https://www.microsoft.com/en-us/photodna.](https://www.microsoft.com/en-us/photodna)

<sup>282</sup>. Sharing hashes across industry, *Thorn*: [https://www.thorn.org/reporting-child-sexual-abuse-content-shared-hash/.](https://www.thorn.org/reporting-child-sexual-abuse-content-shared-hash/)

same regard, it breaks down a video into key frames (i.e., screenshots) and then creates hashes of those frames. This technology is also able to detect CSAM that has been edited or embedded into a longer video footage which appears harmless.<sup>283</sup> This is particularly important to deploy technology that is able to detect videos, given that the number of CSAM files in the form of videos exceeds the numbers of images as previously stated.

## Detecting Live Online Child Sexual Abuse

While these technologies are crucial to detect, remove and report CSAM, it only provides a reactive approach. In other words, the harm caused to children which may have occurred multiple times is already done when CSAM is being discovered. Moreover, while these technologies can tackle CSAM resulting from live online child sexual abuse in the form of images or videos, it does not prevent the sexual abuse from happening in real time at the first place. As a result, technology that proactively identifies live online child sexual abuse in real time is necessary to appropriately respond to this issue. Additionally, it is worth highlighting that such technology has the potential to prevent children from being sexually abused at all since it occurs in real time and the inability to transmit it would preclude the sexual abuse from happening.

### MACHINE LEARNING AND ARTIFICIAL INTELLIGENCE

#### Google's Content Safety API and CSAI Match

Content Safety API relies on machine learning classifiers which proactively identifies static images and previously unseen CSAM that can be reviewed and, if confirmed as CSAM, removed and reported. This technology can be used by organizations to classify and prioritize potentially abusive content for review. Google reported that during the first half of 2021, its partners using the Content Safety API classified over 6 billion images. This technology

enables organizations to identify new CSAM quickly and prioritize this type of content, which also increases the speed at which child victims of sexual abuse can be identified and safeguarded. In the same regard, CSAI Match is used for video hash matching and enables organizations to identify and remove re-uploads of previously identified CSAM in the form of videos against their database.<sup>284</sup>

#### YouTube Live Streaming & Premieres

YouTube enables users to watch and livestreaming their own videos on the platform, which can be used for live online child sexual abuse. However, in order to detect the sexual abuse of children, Google deploys comments classifiers to detect comment that could be indicative of a session of live online child sexual abuse. These comments can be captured, removed and ultimately reported. Furthermore, Google has "invested in technology that [enables them] to monitor live streams and flag any potential inappropriate behavior as well as flag whether minors are engaging in a live stream. In such cases, the live stream would be queued in a list pending review by a moderator."<sup>285</sup> Google has a team of reviewers responding within minutes to livestreaming sessions which have flagged and, if CSAM is identified, to terminate the session and report it to NCMEC.<sup>286</sup> This technology provides a proactive response by preventing the sexual abuse of children as soon as it is detected.

**283.** "How PhotoDNA for Video is being used to fight online child exploitation," *Microsoft*: <https://news.microsoft.com/on-the-issues/2018/09/12/how-photodna-for-video-is-being-used-to-fight-online-child-exploitation/>; "Image Hash List," Internet Watch Foundation: <https://www.iwf.org.uk/our-technology/our-services/image-hash-list/>.

**284.** Fighting child sexual abuse online, *Google*: <https://protectingchildren.google/#introduction>.

**285.** "E.2: Challenges posed by live streaming," *Independent Inquiry Child Sexual Abuse*: <https://www.iicsa.org.uk/reports-recommendations/publications/investigation/internet/part-e-live-streaming/e2-challenges-posed-live-streaming>.

**286.** How does YouTube manage harmful content? *YouTube*: [https://www.youtube.com/intl/en\\_be/howyoutubeworks/our-commitments/managing-harmful-content/](https://www.youtube.com/intl/en_be/howyoutubeworks/our-commitments/managing-harmful-content/).

## Detecting the Solicitation of Children for Sexual Purposes

The use of artificial intelligence to identify and block grooming within communications is already in use, however, according to WeProtect, only 37% of companies who responded to a survey deploy such technology.<sup>287</sup> This can be attributed to several factors. First, in order to build such technology, it is necessary to train algorithms based on chat scripts, which requires effective collaboration between law enforcement, technology companies and engineers. Most importantly, it requires data-sharing to enhance innovation, however, due to strict privacy laws, it may pose a challenge to develop this technology. Second, this technology should work in multiple languages as well as overcome the use of slang and codewords in order to effectively prevent grooming.

### IWF KEYWORDS LIST

In this regard, it is worth mentioning the IWF Keywords List, which compiles words, phrases, and codes used in the context of child sexual abuse and exploitation which can be deployed through online platforms in order to detect textual indicators of the solicitation of children for sexual purposes as well as live online child sexual abuse.<sup>288</sup>

### SAFETONET

SafeToNet is a technology which is able to detect the creation of CSAM being uploaded and shared as well as to interrupt livestream session. The software analyzes video content frame by frame to assess its risk and identify high-risk imagery using a machine-learning algorithm. It is also able to detect graphic content in cartoon form. The detection of such content immediately triggers the restriction of the electronic device such as cameras and microphones and can render an application or entire device inoperable and thereby prevent the material being taken. The software functions regardless of whether the content is being livestreamed by a third party or self-generated by children themselves. It is worth highlighting that this technology is readily deployable in end-to-end encrypted environments.<sup>289</sup>

## Legal challenges

It is important for technology companies to be able to proactively utilize technology tools to scan their networks and platforms in order to identify and eliminate CSAM. As stated in Article 5 of the Council Decision of 29 May 2000 to combat child pornography on the Internet, "Member States shall cooperate, in contact with industry, by sharing their experiences and encouraging, as far as possible, the production of filters and other technical means to prevent the distribution of child pornography material and to make possible the detection thereof."<sup>290</sup> However, one of the most significant legal challenges in Europe that could negatively impact the deployment of technology in order to detect, remove and report CSAM as well as live online child sexual abuse is the Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector. This directive focuses on the confidentiality of communications as well as the rules regarding tracking and monitoring and came into effect on 21 December 2002. The application of Article 5 of this directive prevents technology companies from deploying automated technology to "monitor" users' communications. These technology companies have been voluntarily using technology to detect, remove and report various forms of child sexual abuse and exploitation, but due to this provision their platforms are likely to be technically in breach of the directive. As a consequence, NCMEC reported a 58% decrease in EU-related Cyber Tipline reports after the directive came into force and some technology companies discontinued to provide these reports in order to comply with the directive.<sup>291</sup>

<sup>287</sup>. "Global Threat Assessment 2021," *WeProtect Global Alliance*, p. 39.

<sup>288</sup>. Keywords, *Internet Watch Foundation*: <https://www.iwf.org.uk/our-technology/our-services/keywords-list/>.

<sup>289</sup>. SafeToNet: <https://safetonet.com/features/>.

<sup>290</sup>. "Council Decision of 29 May 2000 to combat child pornography on the Internet," *Official Journal of the European Union*: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32000D0375>.

<sup>291</sup>. "European Union CyberTipline Data Snapshot," *National Center for Missing and Exploited Children*, January 26, 2022: <https://www.missingkids.org/childsafetyfirst#>.

Article 5 of this directive states that:



*Member States shall ensure the confidentiality of communications and the related traffic data by means of a public communications network and publicly available electronic communications services, through national legislation. In particular, they shall prohibit listening, tapping, storage or other kinds of interception or surveillance of communications and the related traffic data by persons other than users, without the consent of the users concerned, except when legally authorised to do so in accordance with Article 15(1).<sup>292</sup>*

Nevertheless, a temporary derogation to the legislation was agreed in May 2021 allowing technology companies to continue deploying technology in order to detect, remove and report issues pertaining to the sexual abuse and exploitation of children. However, it is only reinstated for three years.<sup>293</sup> As a result, it is crucial to adopt sustainable legislation to ensure that technology companies are able to detect and report the sexual abuse and exploitation of children, especially since it has surged as a result of the COVID-19 crisis which may have long-term consequences over the upcoming years. Such legislation is of paramount importance for technology companies in order to deploy the aforementioned technologies which may enable them to detect live online child sexual abuse in the first place. It is also worth mentioning that the "monitoring" of communications is conducted through automated technologies, as a result, it is both possible to guarantee children's security while ensuring users' privacy; and only flagged, suspected or likely issues of child sexual abuse and exploitation would be reviewed through human oversight.

The current absence of legal obligations to detect and report these issues results in major inconsistencies among the relevant actors and hamper efforts to tackle sex-based crimes against children online. However, a new European legislation will require technology companies to report issues pertaining to child sexual abuse and exploitation, which would replace the legislation making reporting voluntary. The initiative sets out the responsibilities

of technology companies to detect and report these issues to public authorities and explores the possibility of creating a European center such as the U.S. National Center for Missing and Exploited Children.<sup>294</sup> In the United States, technology companies must report child sexual abuse and exploitation issues to the CyberTipline of NCMEC in accordance with 18 USC 2258A. The reports are then shared by NCMEC with law enforcement agencies around the world.<sup>295</sup> This initiative aligns with the EU strategy for a more effective fight against child sexual abuse, which aims to adopt:



*The necessary legislation to tackle child sexual abuse online effectively including by requiring relevant online services providers to detect child sexual abuse on their services and to report any such abuse to relevant public authorities. The Commission also committed in the strategy to work towards the possible creation of a European centre to prevent and counter child sexual abuse to enable a comprehensive and effective EU response against child sexual abuse online and offline, based on a thorough study and impact assessment.<sup>296</sup>*

**292.** "Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications)," Article 5, Confidentiality of the communications, *Official Journal of the European Union*: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32002L0058>.

**293.** "Fighting sexual abuse of children: Commission welcomes political agreement on interim rules for voluntary detection measures by online service providers," *European Commission*, April 29, 2021: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_20\\_2463](https://ec.europa.eu/commission/presscorner/detail/en/ip_20_2463).

**294.** "Fighting child sexual abuse: Commission proposes new rules to protect children," *European Commission*: [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_22\\_2976](https://ec.europa.eu/commission/presscorner/detail/en/IP_22_2976).

**295.** "U.S. Code," *Cornell Law School Legal Information Institute*, 18 U.S. Code § 2258A - Reporting requirements of providers: <https://www.law.cornell.edu/uscode/text/18/2258A>.

**296.** "Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions EU strategy for a more effective fight against child sexual abuse," *European Commission*: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020DC0607&qid=1634899236324>.

The successful adoption of such legislation requiring technology companies to identify and report child sexual abuse and exploitation issues as well as the creation of such center represent a milestone. Moreover, the European Commission “will start preparing sector-specific legislation in order to tackle child sexual abuse online more effectively, in full respect of fundamental rights, including in particular the right to freedom of expression, protection of personal data and privacy.”<sup>297</sup> In addition, the creation of legal provisions that hold technology companies liable for failing to report child sexual abuse and exploitation issues and result in substantial penalties (i.e., monetary fines, imprisonment) may act as an incentive for technology companies to proactively detect and report these issues<sup>298</sup>. For example, the United Kingdom Online Safety Bill, which is the cornerstone of the country’s commitment to make it the safest place in the world to be online, establishes a regulator with the power to impose fines for non-compliance with the legislation of up to 10% of the companies’ global turnover.<sup>299</sup>

## DATA RETENTION

### General Data Protection Regulation (“GDPR”)

The GDPR sets out detailed requirements for technology companies on collecting, storing and managing users’ data. It applies both to European companies that process personal data of individuals in the European Union (“EU”) as well as companies outside the EU that target people living in the EU. In other words, the GDPR applies if the company processes personal data and is based in the EU, regardless of where the actual data processing takes place; and if the company is established outside the EU but processes personal data in relation to the offering of goods or services to individuals in the EU or monitors the behavior of individuals within the EU. As a result, non-EU based businesses processing EU citizen’s data have to appoint a representative in the EU. By contrast, the GDPR does not apply if the data subject is dead, a legal person, or if the processing of data is done by a person acting for purposes which are outside their trade, business, or profession. PII may include the name, address, ID card/passport number, income, cultural profile, Internet Protocol and (“IP”) address of the data subject.<sup>300</sup>

According to Recital 39 of the GDPR:



*The personal data should be adequate, relevant and limited to what is necessary for the purposes for which they are processed. This requires, in particular, ensuring that the period for which the personal data are stored is limited to a strict minimum. Personal data should be processed only if the purpose of the processing could not reasonably be fulfilled by other means. In order to ensure that the personal data are not kept longer than necessary, time limits should be established by the controller for erasure or for a periodic review.<sup>301</sup>*

On the basis of Recital 39 of the GDPR, technology companies should establish time limits for data retention and delete it in order to ensure that it is not kept longer than necessary. Additionally, “the principle of transparency requires that any information and communication relating to the processing of those personal data be easily accessible and easy to understand, and that clear and plain language be used.”<sup>302</sup> As a result, prior to the processing of users’ data, companies should adopt a data retention policy describing how long users’ data is kept. In case it is not possible, the

<sup>297</sup>. Idem.

<sup>298</sup>. “Proposal for a Regulation of the European Parliament and of the Council Laying Down Rules to Prevent and Combat Child Sexual Abuse.” *European Commission*, Article 35, May 11, 2022”: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2022%3A209%3AF-IN&qid=1652451192472>.

<sup>299</sup>. “World-first online safety laws introduced in Parliament.” *GOV.UK*: <https://www.gov.uk/government/news/world-first-online-safety-laws-introduced-in-parliament>.

<sup>300</sup>. “Data protection under GDPR,” *European Union*: [https://europa.eu/youreurope/business/dealing-with-customers/data-protection/data-protection-gdpr/index\\_en.htm](https://europa.eu/youreurope/business/dealing-with-customers/data-protection/data-protection-gdpr/index_en.htm).

<sup>301</sup>. “Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).” *Official Journal of the European Union*: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32016R0679&from=EN#d1e40-1-1>.

<sup>302</sup>. Idem.

criteria for determining the period of time that users' data should be retained must be determined. In the same regard, Directive 2002/58/EC states that data should be erased or made anonymous when it is no longer needed for transmitting a communication.<sup>303</sup>

## Investigative challenges

The fact that technology companies set their own data retention policy results in very different data retention policies from one company to another. The lack of data retention for a reasonable period of time is a major hindrance and even an obstacle in certain investigations.<sup>304</sup> The lack of data retention is also exacerbated by other factors. The crimes committed against children using online means such as live online child sexual abuse are particularly difficult to detect and they may be discovered or reported to law enforcement only months or even years after they have occurred. Furthermore, these crimes are also complex from an investigative perspective, especially when perpetrators attempt to remain anonymous. It can also be time-consuming to obtain data evidence from other jurisdictions. In fact, data evidence could be already deleted and unavailable for investigation and prosecution before law enforcement obtain the lawful process. As a result, cases of child sexual abuse and exploitation may come to a dead end without proper data retention. As mentioned previously in this report, online crimes against children have only increased over the years and have surged as a result of the COVID-19 crisis, which may have long-term consequences for the upcoming years. In this regard, it is worth highlighting that "the need for effective, efficient, and lawful access to data in criminal investigations is paramount in the digital age. Obstacles to obtaining such electronic evidence jeopardize investigations into every category of criminal activity – including terrorism, financial fraud, drug trafficking, child sexual exploitation, human trafficking, and computer hacking."<sup>305</sup>

Technology companies have the technical means to retain users' data in order to make it available for purposes of criminal investigation and prosecution. Additionally, they have the ability to determine for how long they retain users' data. As a result,

proper data retention policies could prevent loss or modification of stored user's data in order to use it as evidence during the investigative and prosecution process. In this regard, technology companies should ensure to retain data for suspected or confirmed users who commit or who are likely committing sex-based crimes against children, or at least to report such issues in a timely manner. This is particularly relevant for live online child sexual abuse given that child sex offenders may initiate contact with traffickers, facilitators or children themselves directly via the platforms offered by major technology companies. They may also use these platforms to engage in the solicitation of children for sexual purposes before committing acts of sexual abuse in real time on other private and secured online platforms. It is worth mentioning that many platforms offered by technology companies also integrate video and livestreaming capabilities., as a result, live online child sexual abuse poses a global threat on the technological sector.

## UNDERCOVER OPERATIONS

Undercover operations involve the use of deception by law enforcement officers to obtain information and evidence that could be used to build a criminal case against the criminals targeted by the undercover activity. WeProtect highlighted that 90% of successful live online child sexual prosecutions abuse rely on the use of covert investigative techniques.<sup>306</sup>

**303.** "Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications)," Article 5, Confidentiality of the communications, *Official Journal of the European Union*, Article 6, Traffic data: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32002L0058>.

**304.** Jason Weinstein, "Data Retention as a Tool for Investigating Internet Child Pornography and Other Internet Crimes," *The United States Department of Justice*, January 25, 2011: <https://www.justice.gov/sites/default/files/testimonies/witnesses/attachments/01/25/11/01-25-11-crm-weinstein-testimony-re-data-retention-as-a-tool-for-investigating-internet-child-pornography-and-other-internet-crimes.pdf>.

**305.** Brad Wiegmann, "Law Enforcement Access to Data Stored Across Borders: Facilitating Cooperation And Protecting Rights," *United States Senate Committee on the Judiciary*, May 24, 2017: <https://www.judiciary.senate.gov/imo/media/doc/05-24-17%20Wiegmann%20Testimony.pdf>.

**306.** "Global Threat Assessment 2021," WeProtect Global Alliance, p. 63.

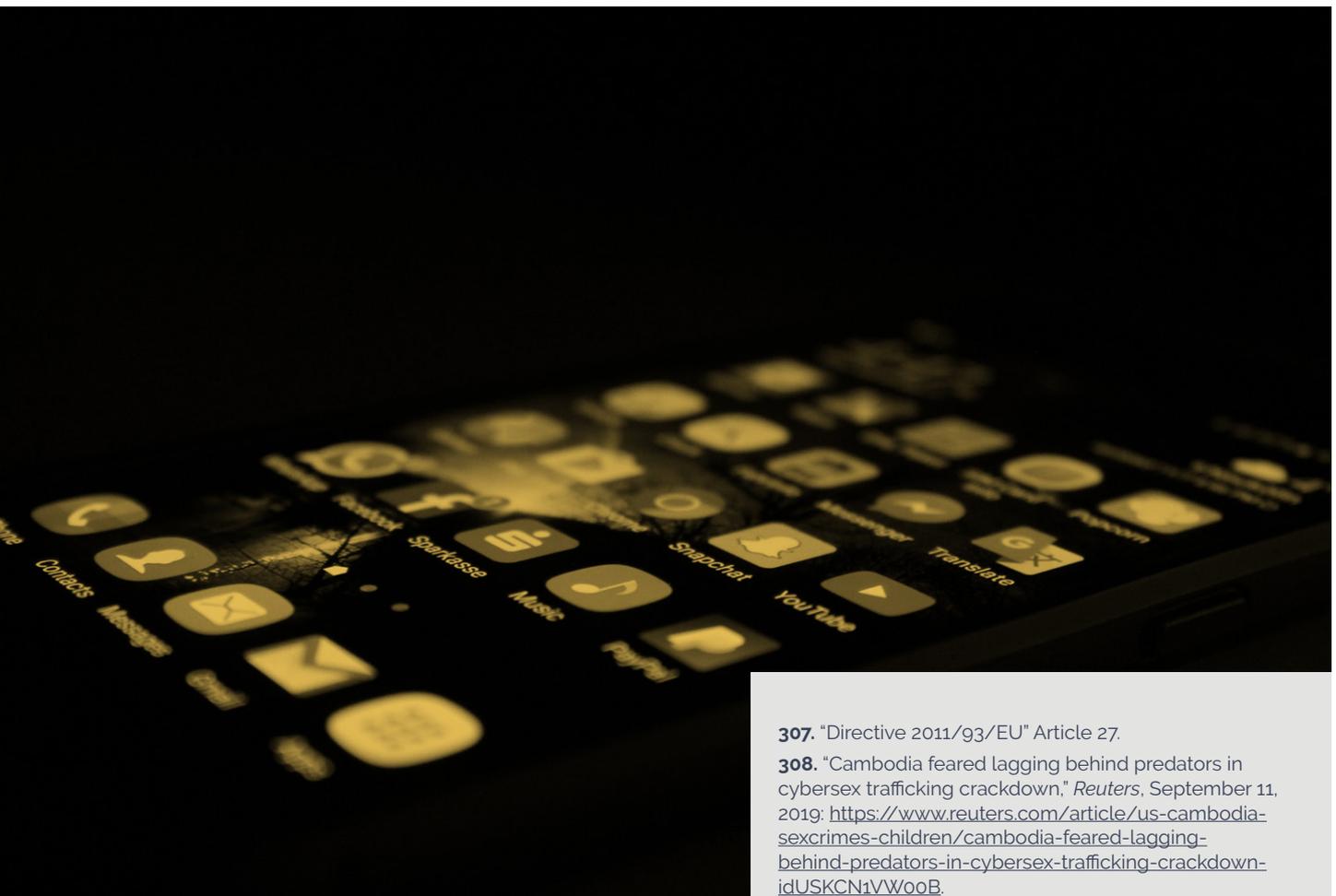
From a European legal perspective, according to Article 27 of the Directive 2011/93/EU:



*(27) Effective investigatory tools should be made available to those responsible for the investigation and prosecutions*

*of the offences referred to in this Directive. Those tools could include interception of communications, covert surveillance including electronic surveillance, monitoring of bank accounts or other financial investigations, taking into account, inter alia, the principle of proportionality and the nature and seriousness of the offences under investigation. Where appropriate, and in accordance with national law, such tools should also include the possibility for law enforcement authorities to use a concealed identity on the Internet.<sup>307</sup>*

Some jurisdictions may face investigative limitations with regard to undercover operations. For example, in Cambodia, undercover investigations are prohibited according to the law.<sup>308</sup> Since live online child sexual abuse relies on the use of ICTs and is often transnational in nature, such legislation may pose significant challenges for undercover operations conducted by law enforcement. In addition to preventing law enforcement from conducting such operations, it may also prevent them from proactively monitoring and assessing the prevalence of this phenomenon online.



**307.** "Directive 2011/93/EU" Article 27.

**308.** "Cambodia feared lagging behind predators in cybersex trafficking crackdown," *Reuters*, September 11, 2019; <https://www.reuters.com/article/us-cambodia-sexcrimes-children/cambodia-feared-lagging-behind-predators-in-cybersex-trafficking-crackdown-idUSKCN1VW00B>.

# CONCLUSION AND RECOMMENDATIONS



## For the attention of the legislator

- 1. We recommend to enact national legislation expressly criminalizing live online child sexual abuse in order to recognize and address it as a unique form of sexual abuse and exploitation of children. Furthermore, legislation at the national level should be updated possibly within a reasonable short period of time due to the rapid growth of this crime in scale and the ease of perpetrators to sexually exploit and abuse children online in real time and relative secrecy from the comfort of their home.**

It is worth recalling that children are the most vulnerable members of society and require the highest level of protection, especially in a hyperconnected world where perpetrators of sex-based crimes against children are able to use ICTs to sexually abuse and exploit children anywhere in the world. The lack of provisions in existing legislation and explicit criminalization of live online child sexual abuse may result in a lack of awareness among the public, law enforcement practitioners and other key stakeholders. In this regard, this crime may not be recognized as a serious form of sexual exploitation and abuse of children on its own and may therefore remain out of sight. The absence of legislation directly criminalizing live online child sexual abuse may lead towards

different sentencing and prosecution outcomes for one particular criminal offence. Additionally, it may also give perpetrators the confidence to continue offending because of the possibility that such crime is not taken as seriously as other sexual offences. The implementation of legislation which directly criminalizes and recognizes live online child sexual abuse as a unique criminal offence that makes it possible to prosecute child sex offenders involved in this crime is crucial in order to tackle this phenomenon as well as to create a safer online environment for children. In this regard, live online child sexual abuse should be considered as a separate criminal offence in its own right containing elements within the group of cybercrime offences and child sexual exploitation and abuse offences. The implementation of legislation which directly criminalizes and recognizes live online child sexual abuse as a unique criminal offence may also have a deterrent effect on both the supply and demand of this crime by ensuring punishment to perpetrators who may seek to sexually abuse and exploit children. In this regard, criminological research has demonstrated that the certainty of punishment has a stronger deterrent effect for perpetrators who may seek to engage in such criminal activity. As a result, comprehensive national legislation aligning with international standards and taking into account technological advancements is a prerequisite for enabling law enforcement practitioners to investigate and prosecute perpetrators, and ultimately protect children.

In the meantime, law enforcement practitioners may still prosecute, convict and sentence child sex offenders involved in live online child sexual abuse on the basis of existing provisions pertaining to sexual offences against children. However, these provisions only address specific aspects of live online child sexual abuse such as rape, sexual

assault, CSAM or the solicitation and trafficking of children for sexual purposes. Additionally, the existing provisions related to sexual offences and child sexual exploitation and abuse cater more to traditional sexual offences involving physical acts, travel or child sexual abuse material in the form of images. As a result, law enforcement practitioners like judges have to rely on the existing legislation at hand, which fails to encompass the phenomenon as a whole and all the steps that the crime involves: e.g., soliciting children or adult individuals in order to sexually abuse children, searching and targeting vulnerable children and individuals online, using ICTs to communicate, negotiate, requesting, directing or transmitting the sexual abuse of children in real time and making payments for the sexual abuse of children.

The current national legislations and the existing provisions fail to address the cruelty of the sexual abuse committed against child victims as well as the real-time active participation of the perpetrator by requesting, ordering and instructing the type of sexual acts to be carried out by and/or against children. As a result, it is important to enact specific legislation to criminalize live online child sexual abuse, because charging and convicting child sex offenders on the basis of CSAM-related legislation may result in inappropriate sentences and mere fines which fail to picture the severity of the sexual offences. Moreover, the fact that live online child sexual abuse tends to be a cross-border phenomenon also requires the harmonization of national legislations to avoid disparities which may negatively impact the protection of children from sexual exploitation and abuse.

## **2. We recommend to enact national legislation expressly defining live online child sexual abuse based on a common and internationally agreed definition and terminology.**

There is conceptual confusion surrounding the use of certain terms and some disagreement over their actual meaning. In addition, the use of some terms may even stigmatize children. This can pose significant challenges leading to inconsistencies in the formulation of policy and intervention strategies, which are magnified in the context of transnational child sexual abuse and exploitation. The absence of consensus and the lack of any agreed terms, especially at international level, may pose significant challenges in terms of translation and lead authors to use similar notions which may differ significantly from one another.

The term "pornographic performance" appears to be inappropriate to define the offences stated in Articles 2(e) and 4 of Directive 2011/93/EU referring to live online child sexual abuse. On the one hand, the term "pornography" is primarily used for adults engaging in consensual sexual acts distributed to the general public for their sexual pleasure. As a result, this term appears to be inappropriate as it may, inadvertently or not, contribute to insinuating that the acts are carried out with the consent of the child and represent legitimate sexual material. The term may also contribute to diminishing the gravity of the actual sexual abuse/exploitation of children or trivializing and even legitimizing it. On the other hand, the term "performance" conveys the idea of artistic performance, which may also diminish the gravity of the actual sexual abuse/exploitation of children or trivialize and give a sense of legitimacy. As a result, the terminology used to refer to live online child sexual abuse should reflect the real gravity of the offence without making the offence seem innocuous.

The following terms should be avoided:

- Webcam Child Sex Tourism
- Webcam child prostitution

Particular attention should be given to the following terms:

- Livestreaming or Live Distant Child Abuse ("LDCA")

- Child Sexual Abuse to Order

On the basis of the Luxembourg Guidelines and the aforementioned considerations, the term “live online child sexual abuse” appears to be the most appropriate as it reflects the key aspects of this crime. First, the term “live” highlights the technological aspect of the crime without overemphasizing it. Second, the term “online” specifies that the criminal offence is conducted remotely and highlights the geographical aspect as well as the jurisdictional implications of this crime without overemphasizing the notion of distance. Third, the term “child sexual abuse” highlights the fact that the sexual abuse of children is real and actually occurs. Lastly, in addition to accurately reflecting the reality of live online child sexual abuse, these terms have a generally agreed meaning and/or can be used without stigmatising and/or otherwise harming the child according to the IWG.

**3. In the absence of national legislation expressly defining and criminalizing live online child sexual abuse, we recommend that law enforcement practitioners rely as much as possible on legal provisions pertaining to offline or “hands-on” sexual offences (e.g., rape, sexual assault or trafficking) since these offences accurately reflect the actual harm caused to children.**

It is worth recalling that child sex offenders involved in live online child sexual abuse do not fall within the traditional type of child sex offenders. These new perpetrators are characterized primarily by the fact that they want to be in control of the sexual abuse of children because viewing CSAM may not be enough. They decide *what* is done to children, *how* it is done and for *how long* the acts are carried out. They may also decide the age, gender and number of children they want to sexually abuse. As a result, they may have a “customized” and real-time interactions with the children they sexually abuse. Additionally, they may also determine the severity of the acts carried out as well as the length of the sexual abuse. In addition to being in control of the sexual abuse, they do not want to expose themselves by physically

engaging with children in order to sexually abuse them. As a result, technology enables these child sex offenders to commit the acts they cannot or do not want to carry out against children physically by proxy. In this regard, technology allows them to carry out these acts from the comfort of their home with relative secrecy and enables them to target multiple children with ease. The threats posed by live online child sexual abuse may be considered much higher than in the case of other traditional forms of child sexual exploitation and abuse, because it allows them to sexually abuse children much more frequently, much more cheaply and they are able to target a higher number of children since they do not have to actually travel somewhere else for sexually abusing children.

Child sex offenders involved in live online child sexual abuse are not receiving sentences that accurately reflect the gravity of their crimes. The sentences based on existing CSAM legislation are inadequate to punish, disrupt, and restrain these perpetrators, let alone to bring justice to child victims. Considering the numerous serious counts of sexual abuse, the repeated and premeditated offences and the severe harm caused to child victims of live online child sexual abuse, it is necessary that perpetrators receive sentences that accurately reflect the gravity of their crimes. In this regard, law enforcement practitioners should rely as much as possible on legal provisions pertaining to offline or “hands-on” sexual offences. Additionally, multiple courts of law have highlighted that although live online child sexual abuse does not include physical contact between the perpetrator and the child victim, it still has the same moral culpability as that of a contact sexual offence which often results in maximum penalties as highlighted in the case studies discussed in this report (see above: “DPP (Cth) v Beattie [2017] NSWCCA 301”, “R v Chicoine, 2019 SKCA 104 (CanLII)”, and “Matthew Bell”).

It is worth recalling that the psychological effects on child victims involved in live online child sexual abuse may be significant as it involves multiple remote child sex offenders to view and/or request/direct the sexual abuse committed against child victims. This distance may result in more severe sexual abuse given that it may desensitize perpetrators. Additionally, the fact that the perpetrators may request the acts to be carried out via a third person removes the sense of guilt and involvement in the

crime. This element enables child sex offenders to actively participate in the sexual abuse of children in real time and to act out their sexual fantasies, which increases the level of physical and psychological harm caused to child victims.



## For the attention of governmental authorities

**4.** We recommend to criminalize the solicitation of children for sexual purposes whether child sex offenders intend to meet offline or not, whether the actual meeting/sexual abuse takes place or not, and whether the criminal offence is carried out to a child or through a third party.

The criminalization of the solicitation of children for sexual purposes offences may enable law enforcement practitioners to identify and prevent latent or undetected child sex offenders who are targeting children in order to engage in live online child sexual abuse. Moreover, it may also prevent child victims from experiencing further victimization. This is particularly relevant for live online child sexual abuse since perpetrators may use this method specially when they attempt to sexual abuse children from countries of the Global North. By contrast, in the context of live online child sexual abuse resulting from the trafficking of children for sexual purposes, child sex offenders access child victims by establishing relationships and contact with Filipino locals; by proactively contacting potential child victims and facilitators through social media or dating sites; or by receiving unsolicited offers from facilitators and child victims. Although they may not directly engage with children, they engage in a similar manner with adult individuals and the same goal in mind.

In addition, the countries which do have legislation may contain gaps such as the requirement of a physical meeting between the child sex offender and the child victim or the use of certain methods such as deception. In some instances, the provision is only applicable when the offence is carried out directly to a child without including the possibility of soliciting a child through a third person.

**5.** We recommend to implement a combination of preventive measures in order to prevent child sex offenders from (re)offending offline and online.

### A. PUNISHING ATTEMPT CRIMES

Criminalizing attempt crimes may serve as an early warning to child sex offenders although the crimes are incomplete and deter them from committing such crimes in the future. One of the most significant benefits of criminalizing attempt crimes is that it would obviate the necessity of providing evidence that live online child sexual abuse occurred in the absence of child sexual abuse material being captured and saved, which is one of the most challenging aspects of this phenomenon. It is also necessary to criminalize attempts due to the fact that the crime is deliberate. The perpetrator is fully aware of the acts carried out against children as they may target vulnerable individuals and children, proactively request/order the sexual abuse of children, conduct payments and negotiate the sexual acts to be carried out. This is also applicable for perpetrators who are proposed to sexually engage with children in real time online by traffickers and facilitators and accept the proposal as they deliberately decide to commit the crime. In the context of the solicitation and the sexual extortion of children for sexual purposes, the attempt of sexually abusing or sexually engaging with children through means of ICTs may be considered as an attempt crime. As regards family-run and organized operations, the request or arrangement of the sexual abuse of children with traffickers or facilitators and the payment for committing such acts even though they do not take place may be considered as an attempt crime as well.

## B. ENHANCING PUNISHMENT

It is worth enhancing punishments for child sex offenders and traffickers who are part of organized crime groups in order to tackle both the “supply” and “demand” sides of live online child sexual abuse as well as to develop sustainable long-term prevention. As a result, sex-based crimes against children should carry strict sentences and have a deterrent effect and prevent first-time child sex offenders from reoffending, which is in line with the Budapest Convention: i.e., offences should be punishable by effective, proportionate and dissuasive sanctions including by the deprivation of individuals’ liberty.

In contrast to child victims of rape or sexual assault, the sexual abuse committed in real time online may be even more severe given that child victims may be exposed simultaneously to the requests of multiple child sex offenders, which is a form of abuse that can be compared to group rape where each perpetrator takes an active part in the sexual abuse of the victim and has the possibility to act out their personal sexual fantasies.

## C. ADDITIONAL PREVENTIVE MEASURES

In this regard, it is worth considering additional preventive measures limiting the individuals’ liberty not only from a carceral perspective. The role of child sex offenders participating in the sexual abuse of children online should never be minimized since this is frequently not an isolated act. In addition to requesting the sexual abuse of the child and/or dictating how the acts should be carried out, child sex offenders may arrange travel specifically to sexually engage with children offline. There is a strong association between the consumption of live online child sexual abuse and subsequent travelling to sexually abuse the children in the country where they are located. As a result, live online child sexual abuse may be a precursor to transnational child sexual offending. In addition, a child sex offender convicted for CSAM offences may decide to engage in live online child sexual abuse upon release given that this form of child sexual abuse is more difficult to trace and leaves less evidence.

## D. THERAPEUTIC TREATMENT (IN COMBINATION WITH OTHER PREVENTIVE MEASURES)

It is critical to assess the dangerousness and risk of reoffending as well as the effectiveness of the therapeutic programs and measures themselves. However, the use of therapeutic treatment alone may not be effective due to the nature of the acts committed in the context of live online child sexual abuse.

## E. CRIMINAL RECORDS AND INFORMATION SHARING

It is important to establish a similar system to ECRIS at the international level or with the higher-risk jurisdictions for child sexual abuse and exploitation in order to effectively share information on the criminal history of individuals. ECRIS ensures that information is exchanged between European Member States in a uniform, fast and compatible way; provides law enforcement practitioners with easy access to comprehensive information on the criminal history of individuals concerned, including in which European countries they have previously been convicted; and removes the possibility for child sex offenders to escape the consequences of their previous convictions in another European Member State. As a result, ECRIS enables European Member States to avoid the risk of reoffending of their national citizens.

## F. IMPOSING TRAVEL BANS

In addition to registering child sex offenders and keep track of their activities via national child sex offender registers and share criminal information between jurisdictions, restrictions should also be imposed on international travel. Imposing travel bans is particularly relevant for child sex offenders who targeted particularly vulnerable child victims abroad from vulnerable backgrounds (e.g., Southeast Asia) in the context of live online child sexual abuse. It may also prevent them from travelling in order to escape their jurisdiction’s restrictions and physically reoffend abroad in countries with higher levels of poverty, weaker child protection systems and offering easy access to vulnerable children. Nevertheless, the implementation of such restrictions requires the allocation of enough human resource to monitor registered child sex offenders. In addition to restrictions on international travel, child sex offenders who are deemed dangerous

may be deprived of their freedom of movement by removing their travel documents.

### G. PROHIBITED OCCUPATIONS

In addition to imposing travel bans, it is important to take the additional prevention initiative consisting of preventing convicted child sex offenders from practicing a profession or activity that put them in regular contact with children. This measure should apply to paid and volunteer work, or any type of activity placing child sex offenders into a position of trust or authority. While prohibiting child sex offenders from practicing higher-risk professions or activities may prevent them from reoffending, it is nonetheless challenging to ensure the enforcement of such provision. Some professions or activities, especially in the context of voluntary work and with the development of online activities (i.e remote class support), may lack formal procedures in the selection of individuals. In foreign countries with higher levels of poverty, voluntary work may be an urgent necessity which allows convicted child sex offenders to easily become valuable and influential actors among local communities. As a result, the combination of both travel bans and prohibited occupations may constitute an effective way for convicted child sex offenders to reoffend as well as to prevent them from practicing professions and activities involving children both domestically and internationally. It is worth highlighting that such measure also require effective information sharing between jurisdictions.

### H. IMPOSING INTERNET BANS

While imposing travel bans is necessary to avoid child sex offenders travelling in order to reoffend or to escape law enforcement and punitive requirements (e.g., notification, therapeutic requirements, etc.), it is important to consider imposing internet bans in order to avoid child sex offenders reoffending online. This measure is particularly relevant to child sex offenders convicted for offences pertaining to live online child sexual abuse since the internet and the use of ICTs enable them to sexually abuse child victims. The OCRVP pointed out that half of the child sex offenders being subject to criminal investigations have been previously convicted for sex-based crimes against children. Technology is at the heart of live online child sexual abuse regardless of whether it results from the solicitation or trafficking of children for sexual purposes. Perpetrators use it to target vulnerable child victims as well as to sexually

abuse them. As a result, this measure appears to be a particularly effective one to prevent perpetrators from reoffending upon release by prohibiting them from engaging in a variety of everyday conduct such as the use of the internet. Additionally, this provision acknowledges the technological advancements which have changed the nature of child sexual abuse and exploitation, and the global social context in which sex-based crimes occur. Children have never been more exposed to harm in such a hyperconnected world, while perpetrators have been given unprecedented access to vulnerable child victims from virtually anywhere in the world.

**6. We recommend that law enforcement practitioners to have a scaling system and sentencing guidelines at their disposal in order to effectively assess and categorize offences committed in the context of live online child sexual abuse and assist judges take a consistent approach to sentencing as well as to impose sentences proportionate to the actual harm caused to child victims. This is particularly relevant for live online child sexual abuse case since there is no specific legal provisions at national level to address this issue.**

### A. SCALING SYSTEM, SENTENCING GUIDELINES AND FACTORS TO CONSIDER

It is important to consider the creation of a scaling system pertaining to the nature of the offences and the severity of the acts committed in the context of live online child sexual abuse. This is particularly relevant to live online child sexual abuse given the lack of national legislation and appropriate legal provisions. In addition, a comprehensive scaling system could enable law enforcement practitioners to assess and categorize the acts committed in the context of live online child sexual abuse even in the absence of captured images and videos, for example via chat logs, payments, etc. It is also worth considering the creation of sentencing guidelines, which may provide guidance on factors judges should consider upon sentencing.

**7.** We recommend to ensure that sentences do not result in disparities between countries of the Global North and countries of the Global South in order for child victims to receive fair justice regardless of where they had been sexually abused.

It appears that sentences are higher in countries of the Global North than when it comes to other jurisdictions, especially countries of the Global South. Any disparity in sentences may send the message that committing acts of sexual abuse towards children from foreign jurisdictions is less harmful than in countries of the Global North. Moreover, it may also send the message to perpetrators that they can commit acts of sexual abuse towards foreign children with impunity and that committing these acts may result in low sentences. While IJM has already urged the United Kingdom government on this issue, the same observations were made based on the case studies discussed in this report (see above: case studies per country).

**8.** We recommend that law enforcement agencies in known demand countries within Europe take part in collaborative partnerships in order to tackle live online child sexual abuse, especially when it takes an international dimension and it when it results from the trafficking of children for sexual purposes (e.g., Philippines).

It is worth pointing out that there are some existing resources such as PICACC, which relies on cooperation among local and international law enforcement agencies in partnership with the non-government organization IJM. The PICACC may maximize collaboration for evidence sharing by providing equipment, training, case referrals, and other partnership to Philippine law enforcement. In Europe, however, only the NCA and the National Police of the Netherlands are partners of this initiative.

**9.** The vast majority of successful live online child sexual abuse prosecutions rely on the use of covert investigative techniques, it is therefore important to ensure that legislation allows law enforcement to perform undercover investigations in order to assess the threat of live online child sexual abuse and successfully tackle this phenomenon.

**10.** At national level, substantial human resources trained in live online child sexual abuse must be available, especially in the law enforcement and justice sectors to conduct the investigations, prosecute, but also ensure the socio-judiciary follow-up and prevent recidivism. Links between offline and online sexual exploitation must be made and collaboration between the professionals themselves is essential.



## For the attention of private sector

**11. Financial institutions should be required or able to report occurrences of sexual abuse and exploitation to law enforcement units specialized in such crimes or any other mandated agency.**

Undercover investigations and the identification of suspicious financial transactions are currently the most effective methods of successfully combating live online child sexual abuse. The fact that financial institutions should be or would be empowered to report the sexual abuse and exploitation of children directly to specialized units or mandated agencies could disrupt this phenomenon more effectively as well as in a timely manner. Financial intelligence is one of the strongest pieces of evidence and direct reports to such units or agencies could enable law enforcement practitioners to take immediate action. According to the OCRVP, the majority of cases of live online child sexual abuse are initiated based on financial intelligence primarily referred by national FIUs. In some instances, this is the only element that enables law enforcement practitioners to initiate a criminal investigation. One of the most significant challenges observed by the OCRVP is that some financial institutions do not respond in a timely manner. This delay may negatively impact criminal investigations in the context of live online child sexual abuse.

**12. We recommend for technology companies to be able to proactively utilize technology tools to scan their online networks and platforms in order to identify and eliminate CSAM.**

As per Directive 2002/58/EC, the application of Article 5 of this directive prevents technology companies from deploying automated technology to “monitor” users’ communications, however, a temporary derogation to the legislation was agreed in May 2021 allowing technology companies to continue deploying technology in order to detect, remove and report issues pertaining to the sexual abuse and exploitation of children. However, it is only reinstated for three years. In this regard, it is crucial to adopt sustainable legislation to ensure that technology companies are able to detect and report the sexual abuse and exploitation of children.

**13. Beyond the ability to utilize technology tools to scan their online networks and platforms, technology companies should be required to detect, remove and report child sexual abuse and exploitation. In addition, it is important to consider the creation of legal provisions that would hold technology companies liable for failing to report child sexual abuse and exploitation issues, which could result in substantial penalties (i.e., monetary fines, imprisonment).**

Technology companies have been voluntarily using technology to detect, remove and report child sexual abuse and exploitation, but the current absence of legal obligations to detect and report these issues results in major inconsistencies among the relevant actors and hamper efforts to tackle sex-based crimes against children online. The creation of penalties would act as an incentive for technology companies to proactively detect and report these issues. For example, the United Kingdom Online Safety Bill, which is the cornerstone of the country’s commitment to make it the safest place in the

world to be online, establishes a regulator with the power to impose fines for non-compliance with the legislation of up to 10% of the companies' global turnover.

**14.** Technology companies should not only focus on the removal of content but also report the individuals involved in the offences as well as to provide as much information as possible to provide law enforcement with actionable intelligence.

**15.** While it important for technology companies to detect, remove and report child sexual abuse and exploitation, we also recommend to develop technology tools that ensure the users' privacy.

The "monitoring" of communications performed through automated technologies makes it possible to guarantee both children's security and users' privacy; additionally, only flagged, suspected or likely issues of child sexual abuse and exploitation could be reviewed through human oversight.

**16.** We recommend that technology companies proactively identify live online child sexual abuse by developing and deploying innovative technology.

The widespread use of file hashing and PhotoDNA results in the detection and reporting of millions of known CSAM, however, it does not and cannot detect newly produced CSAM. This includes CSAM which is transmitted in real time without being stored as a file and which is not subject to screening and content review. The development

of such technology has the potential to prevent children from being sexually abused in real time and preclude the sexual abuse and exploitation from happening at the first place. Examples of such technology include:

- YouTube Live Streaming & Premieres, which consists of deploying comments classifiers to detect comment that could be indicative of a session of live online child sexual abuse.
- IWF Keywords List, which compiles words, phrases, and codes used in the context of child sexual abuse and exploitation. It can be deployed through online platforms in order to detect textual indicators of the solicitation of children for sexual purposes as well as live online child sexual abuse.
- SafeToNet, which is a technology detecting the creation of CSAM being uploaded and shared as well as interrupting livestream sessions. The software analyzes video content frame by frame to assess its risk and identify high-risk imagery using a machine-learning algorithm. The detection of such content immediately triggers the restriction of the electronic device such as cameras and microphones and can render an application or entire device inoperable and thereby prevent the material being taken. The software functions regardless of whether the content is being livestreamed by a third party or self-generated by children themselves. It is worth highlighting that this technology is readily deployable in end-to-end encrypted environments as well.

From a "reactive" perspective, the OCRVP highlighted that child sex offenders involved in live online child sexual may receive pre-recorded CSAM before engaging in livestreaming sessions with the aim of enticing them to engage in such activity as well as to pay higher amounts of money. As a result, the ability to detect such material could enable technology companies to prevent perpetrators from engaging in live online child sexual abuse in case this material would match known material (hashes) in CSAM databases. Additionally, the OCRVP pointed out that all perpetrators involved in live online child sexual abuse having been investigated would possess known CSAM. In addition, there is an exponential increase in SGSC involving children. The phenomenon of

capping has also sharply increased according to multiple law enforcement agencies as well as civil society, which reinforces previous concerns about the increase of SGSC online. The act of recording without the knowledge or consent of the child victims as well as the further dissemination of SGSC from livestreaming sessions is considered as an alarming threat. It is worth highlighting that the SGSC produced in this context and its distribution can cause serious psychological harm to children and result in revictimization. As a result, it is important to detect such material to prevent further victimization of child victims of live online child sexual abuse.

**17.** We recommend that technology companies develop and deploy innovative technology that can detect CSAM in the form of videos.

The detection of CSAM in the form of videos, which may result from live online child sexual abuse, is particularly important given that the number of reports of CSAM in the form of videos exceeds the number of CSAM in the form of images. An example of such technology includes Google's CSAI Match, which is used for video hash matching and enables organizations to identify and remove re-uploads of previously identified CSAM in the form of videos against their database.

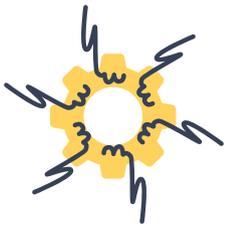
**18.** We recommend that technology companies collaborate with other technology companies in order to effectively tackle the sexual abuse and exploitation of children.

Collaboration between technology companies may reduce the duplication of efforts and optimize the identification of CSAM. An example of collaboration includes sharing hashes via the Industry Hash Sharing Platform created by Thorn, Facebook and Google.

**19.** We recommend that technology companies retain data for a reasonable period of time, especially when it pertains to issues of online child sexual abuse and exploitation. In this regard, it is crucial to agree on a common data retention policy in relation to online child sexual abuse and exploitation.

The fact that technology companies set their own data retention policy results in very different data retention policies from one company to another. The lack of data retention for a reasonable period of time is a major hindrance and even an obstacle in certain investigations. Obstacles to obtaining such electronic evidence jeopardize investigations into child sexual abuse and exploitation. The lack of data retention is also exacerbated by other factors. The crimes committed against children using online means such as live online child sexual abuse are particularly difficult to detect and they may be discovered or reported to law enforcement only months after they have occurred. Furthermore, these crimes are also complex from an investigative perspective, especially when perpetrators attempt to remain anonymous. It can also be time-consuming to obtain data evidence from other jurisdictions. In fact, data evidence could be already deleted and unavailable for investigation and prosecution before law enforcement obtain the lawful process. As a result, cases of child sexual abuse and exploitation may come to a dead end without proper data retention.

The need for effective, efficient, and lawful access to data in criminal investigations is paramount in the digital age. Technology companies have the technical means to retain users' data in order to make it available for purposes of criminal investigation and prosecution. Proper data retention policies could prevent loss or modification of stored user's data in order to use it as evidence during the investigative and prosecution process. In this regard, technology companies should ensure to retain data for suspected or confirmed users who commit or who are likely committing sex-based crimes against children.



## For the attention of public authorities, private sector and non-profit organizations

**20.** We recommend a combination of protective and empowerment measures for child victims in order to mitigate the risk and impact of live online child sexual abuse, measures that should be encouraged in collaboration with non-profit organizations.

### A. RAISING AND HARMONIZING THE AGE OF SEXUAL CONSENT

The legal age of sexual consent varies from country to country and constitutes an obstacle to the consistent and harmonized protection of children from sexual abuse and exploitation, especially at the international level. In this regard, it is worth recalling that live online child sexual abuse is primarily a transnational phenomenon. Any discrepancy could prevent child sex offenders from being prosecuted, therefore, a child, for purposes of anti-live online child sexual abuse legislation, should be considered as anyone under the age of 18 years. According to the Budapest Convention, "the term 'minor' shall include all persons under 18 years of age. A Party may, however, require a lower age-limit, which shall be not less than 16 years." However, the age of sexual consent is below the age of 16 years old in 26 countries in Europe. It is worth pointing out that for the child sexual abuse and exploitation offences listed in Article 3 and Article 4 of Directive 2011/93/EU, the term of imprisonment varies depending on whether the child victim has reached or not the legal age of sexual consent. When the child victim has reached the legal age of sexual consent, the term of imprisonment is approximately divided by half even though there is use of coercion, force or threats. This

implies that the sexual abuse perpetrated by child sex offenders is less harmful to children who have reached the legal age of sexual consent. In addition, child sex offenders who may be familiar with such legislation may adopt the strategy of sexually abusing children who have reached the legal age of sexual consent in order to escape more severe punishments in case they would get caught by law enforcement. As previously emphasized, most of the child sex offenders request that a session of livestreaming of child sexual abuse involve a child victim of a specific age.

### B. AWARENESS AND PREVENTION

It is important that national awareness centers and civil society focus on raising awareness and understanding of the risks associated to live online interactions as well as to provide guidance on social media, gaming and video-based platforms or applications. This is particularly important in order to empower children, parents and other key stakeholders with the necessary knowledge to enable children to stay safe online and to enable them to take advantage of the opportunities that these technologies provide.

The fact that IWF identified CSAM depicting particularly younger children from the Global North alone in a home setting and potentially resulting from live online child sexual abuse and the solicitation of children for sexual purposes shows that there is a lack of awareness among children and parents about the risks associated with live online interactions and the potential for permanent footage to be created as well as distributed outside of children's control. In this regard, awareness-raising initiatives are crucial in order to mitigate the risk of live online child sexual abuse and the solicitation of children for sexual purposes. The public must be aware that live online child sexual abuse has become a widespread crime both in the Global North and Global South and that the sexual abuse of children is real even though it occurs within the online environment. This phenomenon is as harmful as other sex-based crimes against children such as rape and the psychological consequences resulting from these acts may be significant and last for a lifetime.

### C. VICTIM NOTIFICATION SYSTEM

It is important that child victims have the choice and opportunity to opt in or out of victim notification systems in order to avoid exacerbating the psychological damage caused by the initial sexual abuse by being notified each time the material that depicts them is distributed and recirculates online.

### D. (PROXY) VICTIM IMPACT STATEMENTS

Child victims should have the opportunity to provide a written impact statement or personal letter as well as to give an oral statement either themselves or on someone else's behalf. This practice enables judges to consider child victims' voice, who can describe the emotional, physical, and financial impact they have suffered as a direct result of the crime. It enables the Court to better understand the impact of live online child sexual abuse on child victims before they sentence an individual. Moreover, it may also assist judges to decide what sentence child sex offenders should receive. It is worth recalling that the harm caused to child victims in the context of live online child sexual abuse is no less than that resulting from physical sexual abuse even though there is no physical contact with child sex offenders. It is therefore important to incorporate child victims' voice in court proceedings in order to level the playing field between child sex offenders and child victims as well as to allow judges to adequately appreciate the harm caused to them. It enables child victims to be humanized and to share their experience and individual circumstances with judges. While it may be challenging to obtain victim impact statements from child victims located in foreign jurisdictions, law enforcement practitioners should collaborate with relevant organizations internationally which could help finding child victims. For example, in the case of a 51-year-old French national who sexually abused a 14-year-old Filipino girl while retransmitting the sexual abuse online, the child victim gave her testimony through video conference from the French Embassy in Makati City, Philippines. As IJM pointed out, the child victim "made a strong impression on the French prosecutors, judge, ambassador, and staff at the embassy. They were all moved deeply by her story. The online sexual exploitation of children transcends national boundaries. Therefore, combatting this crime type requires cross-border cooperation. This conviction shows that when law enforcement and judiciary between countries work together, justice is unstoppable."<sup>309</sup> Additionally, a successful collaboration between IJM, the Women

and Children's Protection Centre, French authorities and the Department of Justice resulted in this significant conviction.

### E. PROFESSIONAL REPORTS

Professional reports may provide an objective view on the physical and psychological harm caused to child victims during court proceedings. As a result, law enforcement practitioners should inquire about the existence of such professional reports to the relevant organizations in cases of live online child sexual abuse.

### F. OBTAINING FINANCIAL COMPENSATION

In the context of live online child sexual abuse, children may suffer from serious harm due to the contact or non-contact sexual abuse as well as from the revictimization and secondary trauma resulting from the capture of the livestreamed material which may circulate indefinitely online. In addition to sentencing child sex offenders, it is important to obtain financial compensation for the physical and moral damages caused to child victims. The restitution may be critical for child victims to rebuild themselves and pay for their therapy as well as educational or medical needs. Child victims are not necessarily aware of their right to financial compensation as well as they may not even know the identity of perpetrators and be aware of being victims. Furthermore, child victims from foreign jurisdictions are often poorly recognized and rarely seek for financial compensation. Financial compensation is a crucial part in the process of victim recognition. As a result, law enforcement practitioners should proactively explore all the available options in order to collaborate with the relevant entities, whether they are in foreign jurisdictions or not, to obtain financial compensation for child victims of live online child sexual abuse. As mentioned hereabove, child victims should have the opportunity to provide victim impact statements since they can include a financial loss statement allowing judges to determine the amount of money child sex offenders may have to pay to child victims because of the crime.

<sup>309</sup>. "Brave survivor's testimony leads to French sex offender's conviction," *International Justice Mission*: <https://ijm.org.au/news/brave-survivors-testimony-leads-to-french-sex-offenders-conviction/>.

**21.** We recommend to adopt a proactive approach and leverage public-private partnerships between financial institutions and law enforcement agencies to disrupt live online child sexual abuse and other forms of child sexual abuse and exploitation.

These initiatives consist of partnerships between public authorities, the private sector, and the non-profit sector which enables law enforcement, regulatory bodies, private companies, and non-profit organizations to share, leverage, and collaborate against the sexual exploitation and abuse of children for financial gain. While financial intelligence is one of the strongest pieces of evidence aiding law enforcement practitioners in the identification of live online child sexual abuse, financial intelligence alone is not sufficient and other public or private organizations may provide a powerful complement to it. Examples of such initiatives include: Project Shadow; the Asia-Pacific Financial Coalition Against Child Sexual Exploitation, (APFC), formerly known as the APAC Financial Coalition Against Child Pornography); the Egmont Group; the European Financial Coalition against Commercial Sexual Exploitation of Children; the Fintel Alliance; and the U.S. Financial Coalition Against Child Sexual Exploitation (FCACSE), formerly known as the Financial Coalition Against Child Pornography (FCACP).

In this regard, the OCRVP pointed out that only relying on financial intelligence does not guarantee that live online child sexual abuse is actually happening without any other piece of evidence from other law enforcement agencies, regulatory bodies, private companies, and non-profit organizations. In some instances, for examples, cases of suspected live online child sexual abuse turned out to be cases involving human trafficking but of adult individuals.



## Recommendations from survivors

Two survivors from live online child sexual exploitation in the Philippines accepted to share their recommendations to better protect children from the phenomenon. Their participation has been made possible thanks to the support of IJM Philippines.

**22.** Children must be sensitized about online sexual exploitation and must be actively involved in their protection: their empowerment is a key so they can know their rights and educate their peers about the risks and support of online child sexual exploitation.

**23.** Parents, schools and all members of the community must be involved in the prevention of online child sexual exploitation: they should be directly sensitized and they have a key role in awareness raising among children.



# ANTICIPATING THE EVOLUTION OF LIVE ONLINE CHILD SEXUAL ABUSE

The convergence of rapid technological advancements and the increasing degree of interconnectivity worldwide constitute driving forces for the increase of live online child sexual abuse. It is also worth pointing out the lack of national legislation, prevention measures and the apparent investigative challenges to successfully tackle this crime. Furthermore, the confluence of circumstances caused by the COVID-19 outbreak may have long-term consequences on online child sexual abuse and exploitation globally as well as on the supply and demand of live online child sexual abuse. While the research suggests that the demand for live online child sexual abuse was already well-established in the beginning of the last decade, this phenomenon has significantly increased over the years and particularly during the COVID-19 crisis.<sup>310</sup> It is therefore reasonable to anticipate a similar trend in the future.

As regards poverty, the UNICEF pointed out that:



*The economic crisis generated by COVID-19 threatens to hit children and families the hardest. The number of children living in multidimensional poverty – without access to education, health, housing, nutrition, sanitation or water – soared to approximately 1.2 billion in 2020, while an estimated additional 100 million children were projected to have fallen into multidimensional poverty in 2021.<sup>311</sup>*

The global economic hardship exacerbates inequality and poverty which in return accelerates the vulnerability of children and families to trafficking and sexual exploitation. As a result, poverty may greatly impact countries of the Global South where the trafficking of children for sexual purposes is more prevalent and supplies the demand for live online child sexual abuse from perpetrators located in countries of the Global North. Nevertheless, there are concerns from law enforcement agencies that some countries of the Global North severely impacted by poverty or conflicts (Romania, Ukraine) may see similar trends as in Southeast Asia. As previously stated, Interpol reported that live online child sexual abuse for payment is increasing and ECPAT pointed out that law enforcement agencies worldwide report that the majority of child victims of live online child sexual abuse are based in South-East Asia, in particular the Philippines which has been considered by UNICEF and other organizations as the global epicenter of live online child sexual abuse. In the same regard, Europol pointed out that cases of online child sexual exploitation in the Philippines surged during the COVID-19 crisis, which resulted in poor families struggling to generate income and children not going to school due to the lockdowns. Live online child sexual abuse has also taken off in the Philippines due to the increasing popularity of the internet and ICTs. It is worth highlighting that while the Philippines has been considered as the global epicenter of this phenomenon, live online child sexual abuse may also be prevalent in other Southern Asian countries. This is specially the case

**310.** "Webcam Child Sex Tourism, Becoming Sweetie: a novel approach to stopping the global rise of Webcam Child Sex Tourism," *Terre des Hommes*, November 2013 : <https://www.terredeshommes.org/webcam-child-sex-tourism-2/>.

**311.** "COVID-19 impacts on child poverty, Social policy analysis to inform the COVID-19 response," *UNICEF*: <https://www.unicef.org/social-policy/child-poverty/covid-19-socioeconomic-impacts>.

for live online child sexual abuse resulting from the trafficking of children for sexual purposes.

As regards the internet, the International Telecommunication Union, reported that "the Internet has accelerated during the pandemic. In 2019, 4.1 billion people (or 54 per cent of the world's population) were using the Internet. Since then the number of users has surged by 800 million to reach 4.9 billion people in 2021, or 63 per cent of the population." Internet use in Africa and the Asia-Pacific regions raised by respectively 23% and 24% between 2019 and 2021. In this regard, it is worth pointing out that there is an increase of online child sexual abuse and exploitation in Africa, and the development of 4 and 5G on the continent could result in the same situation as it is in the Philippines. The number of internet users in the Global South increased by 20% and accounts for 27% of the population. In the Global North, however, growth has been much weaker due to the fact that internet is already almost universal among the population. The penetration of mobile cellular subscriptions reached a record 110 subscriptions per 100 inhabitants. Mobile subscriptions with broadband capability (3G or better) also rose and reached 83 subscriptions per 100 people. This increase was driven by developing countries in the Asia-Pacific region with 10.5% during the previous three years. The international bandwidth usage reached a worldwide total of 932 Tbit/s in 2021, which accounted for a 30% increase from the previous year. In this regard, the highest international bandwidth use is in the Asia-Pacific region at over 400 Tbit/s, which is twice as high as in Europe (204 Tbit/s) or the Americas (180 Tbit/s). In addition, it is worth highlighting that the United Nations Broadband Commission for Sustainable Development aims at making broadband prices affordable in the Global South by 2025.<sup>312</sup> As regards the youth, 71% of individuals aged between 15 and 24 years were using the internet in 2020. Additionally, the youth is 1.24 times more likely to connect than the rest of the population.<sup>313</sup> The rise in internet accessibility may result in the increase of online child sexual exploitation and abuse, especially in the context of live online child sexual abuse due to the rapid growth in the internet accessibility and high internet speed. As a result, the number of children being sexually exploited and abuse is likely to increase. On the one hand, child sex offenders may recognize an opportunity to

sexually abuse multiple children from the comfort of their home and in relative secrecy. On the other hand, traffickers and facilitators may recognize a financial opportunity to sexually exploit children in a vast global demand for live online child sexual abuse enabled by a global and cheap access to a high-speed internet.

While poverty and the increased use of the internet may result in a significant increase of live online child sexual abuse and the trafficking of children for sexual purposes in the Global South, there is a significant increase of self-generated sexual content/material involving children resulting from live online child sexual abuse in the Global North. The nationwide lockdowns resulting from the COVID-19 crisis impacted the world's children population leading to an increased time spent at home as well as online. The nationwide lockdowns also impacted child sex offenders who had the opportunity more than ever to target vulnerable child victims online. Moreover, TCSOs fell back on live online child sexual abuse which has become a viable alternative for child sex offenders to sexually engage with children. It is also reasonable to believe that the overall situation introduced more potential perpetrators to live online child sexual abuse. In this regard, IWF reported an exponential increase in self-generated sexual content/material involving children.



*Of the 153,369 webpages actioned during 2020, almost half (68,000 or 44%) were assessed as containing self-generated imagery. This is a 16% increase on the total number of reports actioned in 2019, when 132,676 webpages were actioned. Of these, 38,424 were assessed as containing self-generated imagery. This represents a 77% increase from 2019 to 2020 in the proportion of actioned webpages displaying self-generated imagery.*

<sup>312</sup>. "Modern Approaches to Funding Broadband Connectivity," *Broadband Commission for Sustainable Development*: <https://www.broadbandcommission.org/>.

<sup>313</sup>. "Measuring digital development: Facts and figures 2021," *International Telecommunication Union*: <https://www.itu.int/en/ITU-D/Statistics/Pages/facts/default.aspx>.

IWF highlighted that this material is mainly produced using electronic devices and online platforms integrating webcams and livestreaming features as well as by means of manipulation or blackmail involving adult individuals posing as children. IWF also found that 86% of the material depicting children aged 15 and under had been captured from a live webcam stream. The most common forms of CSAM resulting from live online child sexual abuse depicted girls of Western origins and appearing alone in a home setting such as in their own bedroom. As WeProtect highlighted, "increased internet access via connected mobile devices contributes to the sense of entrapment for children who become victims of abuse, as offenders seem to infiltrate all aspects of their daily lives."<sup>314</sup> As a result, live online child sexual abuse, which has been considered as an issue mainly impacting South-Asian countries, is in fact a global phenomenon impacting the lives of children around the world.

<sup>314</sup>. "Global Threat Assessment 2021," *WeProtect Global Alliance*, p. 27.

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